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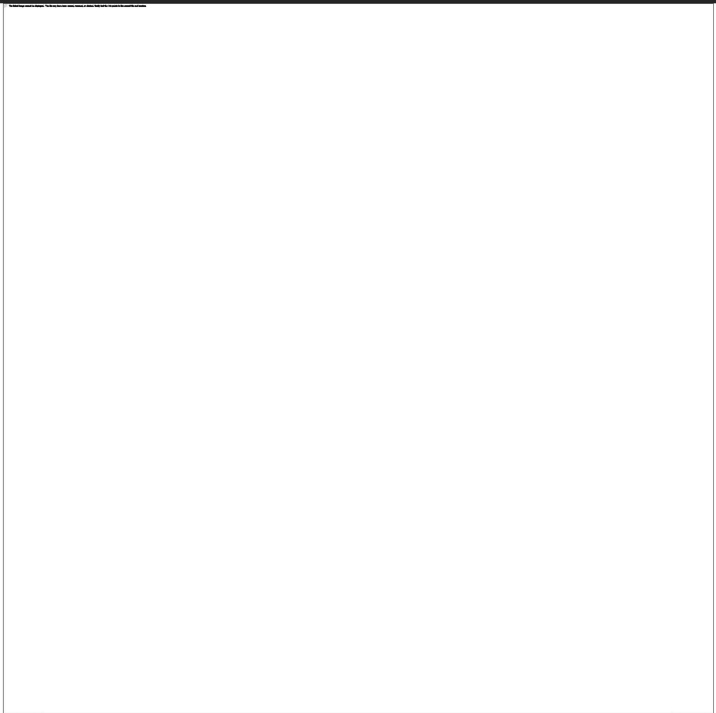

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FCPA

A Resource Guide to the U.S. Foreign Corrupt Practices Act

By the Criminal Division of the U.S. Department of Justice and
the Enforcement Division of the U.S. Securities and Exchange Commission

This guide is intended to provide information for businesses and individuals regarding the U.S. Foreign Corrupt Practices Act (FCPA). The guide has been prepared by the staff of the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission. It is non-binding, informal, and summary in nature, and the information contained herein does not constitute rules or regulations. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party, in any criminal, civil, or administrative matter. It is not intended to substitute for the advice of legal counsel on specific issues related to the FCPA. It does not in any way limit the enforcement intentions or litigating positions of the U.S. Department of Justice, the U.S. Securities and Exchange Commission, or any other U.S. government agency.

Companies or individuals seeking an opinion concerning specific prospective conduct are encouraged to use the U.S. Department of Justice's opinion procedure discussed in Chapter 9 of this guide.

This guide is United States Government property. It is available to the public free of charge online at www.justice.gov/criminal/fraud/fcpa and www.sec.gov/spotlight/fcpa.shtml.

A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT

By the Criminal Division of the U.S. Department of Justice and
the Enforcement Division of the U.S. Securities and Exchange Commission

FOREWORD

We are pleased to announce the publication of *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. The Foreign Corrupt Practices Act (FCPA) is a critically important statute for combating corruption around the globe. Corruption has corrosive effects on democratic institutions, undermining public accountability and diverting public resources from important priorities such as health, education, and infrastructure. When business is won or lost based on how much a company is willing to pay in bribes rather than on the quality of its products and services, law-abiding companies are placed at a competitive disadvantage—and consumers lose. For these and other reasons, enforcing the FCPA is a continuing priority at the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).

The *Guide* is the product of extensive efforts by experts at DOJ and SEC, and has benefited from valuable input from the Departments of Commerce and State. It endeavors to provide helpful information to enterprises of all shapes and sizes—from small businesses doing their first transactions abroad to multi-national corporations with subsidiaries around the world. The *Guide* addresses a wide variety of topics, including who and what is covered by the FCPA's anti-bribery and accounting provisions; the definition of a "foreign official"; what constitute proper and improper gifts, travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the mergers and acquisitions context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. On these and other topics, the *Guide* takes a multi-faceted approach, setting forth in detail the statutory requirements while also providing insight into DOJ and SEC enforcement practices through hypotheticals, examples of enforcement actions and anonymized declinations, and summaries of applicable case law and DOJ opinion releases.

The *Guide* is an unprecedented undertaking by DOJ and SEC to provide the public with detailed information about our FCPA enforcement approach and priorities. We are proud of the many lawyers and staff who worked on this project, and hope that it will be a useful reference for companies, individuals, and others interested in our enforcement of the Act.

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Assistant Attorney General
Criminal Division
Department of Justice

Robert S. Khuzami
Director of Enforcement
Securities and Exchange Commission

November 14, 2012

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Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business.[1]

—United States Senate, 1977

INTRODUCTION

Congress enacted the U.S. Foreign Corrupt Practices Act (FCPA or the Act) in 1977 in response to revelations of widespread bribery of foreign officials by U.S. companies. The Act was intended to halt those corrupt practices, create a level playing field for honest businesses, and restore public confidence in the integrity of the marketplace.[2]

The FCPA contains both anti-bribery and accounting provisions. The anti-bribery provisions prohibit U.S. persons and businesses (domestic concerns), U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the Securities and Exchange Commission (issuers), and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business. The accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.

The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) share FCPA enforcement authority and are committed to fighting foreign bribery through robust enforcement. An important component of this effort is education, and this resource guide, prepared by DOJ and SEC staff, aims to provide businesses and individuals with information to help them abide by the law, detect and prevent FCPA violations, and implement effective compliance programs.

The Costs of Corruption

Corruption is a global problem. In the three decades since Congress enacted the FCPA, the extent of corporate bribery has become clearer and its ramifications in a transnational economy starker. Corruption impedes economic growth by diverting public resources from important priorities such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law.[3] And it threatens stability and security by facilitating criminal activity within and across

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borders, such as the illegal trafficking of people, weapons, and drugs.[4] International corruption also undercuts good governance and impedes U.S. efforts to promote freedom and democracy, end poverty, and combat crime and terrorism across the globe.[5]

Corruption is also bad for business. Corruption is anti-competitive, leading to distorted prices and disadvantaging honest businesses that do not pay bribes. It increases the cost of doing business globally and inflates the cost of government contracts in developing countries.[6] Corruption also introduces significant uncertainty into business transactions: Contracts secured through bribery may be legally unenforceable, and paying bribes on one contract often results in corrupt officials making ever-increasing demands.[7] Bribery has destructive effects within a business as well, undermining employee confidence in a company's management and fostering a permissive atmosphere for other kinds of corporate misconduct, such as employee self-dealing, embezzlement,[8] financial fraud,[9] and anti-competitive behavior.[10] Bribery thus raises the risks of doing business, putting a company's bottom line and reputation in jeopardy. Companies that pay bribes to win business ultimately undermine their own long-term interests and the best interests of their investors.

Historical Background

Congress enacted the FCPA in 1977 after revelations of widespread global corruption in the wake of the Watergate political scandal. SEC discovered that more than 400 U.S. companies had paid hundreds of millions of dollars in bribes to foreign government officials to secure business overseas.[11] SEC reported that companies were using secret "slush funds" to make illegal campaign contributions in the United States and corrupt payments to foreign officials abroad and were falsifying their corporate financial records to conceal the payments.[12]

Congress viewed passage of the FCPA as critical to stopping corporate bribery, which had tarnished the image of U.S. businesses, impaired public confidence in the financial integrity of U.S. companies, and hampered the efficient functioning of the markets.[13] As Congress recognized when it passed the FCPA, corruption imposes enormous costs both at home and abroad, leading to market inefficiencies and instability, sub-standard products, and an unfair playing field for honest businesses.[14] By enacting a strong foreign bribery statute, Congress sought to minimize these destructive effects and help companies resist corrupt demands, while addressing the destructive foreign policy ramifications of transnational bribery.[15] The Act also prohibited off-the-books accounting through provisions designed to "strengthen the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of our system of corporate disclosure."[16]

> No problem does more to alienate citizens from their political leaders and institutions, and to undermine political stability and economic development, than endemic corruption among the government, political party leaders, judges, and bureaucrats.
>
> — *USAID Anti-Corruption Strategy*

In 1988, Congress amended the FCPA to add two affirmative defenses: (1) the local law defense; and (2) the reasonable and bona fide promotional expense defense.[17] Congress also requested that the President negotiate an international treaty with members of the Organisation for Economic Co-operation and Development (OECD) to prohibit bribery in international business transactions by many of the United States' major trading partners.[18] Subsequent negotiations at the OECD culminated in the Convention on Combating Bribery of Foreign Officials in International Business Transactions (Anti-Bribery Convention), which, among other things, required parties to make it a crime to bribe foreign officials.[19]

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In 1998, the FCPA was amended to conform to the requirements of the Anti-Bribery Convention. These amendments expanded the FCPA's scope to: (1) include payments made to secure "any improper advantage"; (2) reach certain foreign persons who commit an act in furtherance of a foreign bribe while in the United States; (3) cover public international organizations in the definition of "foreign official"; (4) add an alternative basis for jurisdiction based on nationality; and (5) apply criminal penalties to foreign nationals employed by or acting as agents of U.S. companies.[20] The Anti-Bribery Convention came into force on February 15, 1999, with the United States as a founding party.

National Landscape: Interagency Efforts

DOJ and SEC share enforcement authority for the FCPA's anti-bribery and accounting provisions.[21] They also work with many other federal agencies and law enforcement partners to investigate and prosecute FCPA violations, reduce bribery demands through good governance programs and other measures, and promote a fair playing field for U.S. companies doing business abroad.

Department of Justice

DOJ has criminal FCPA enforcement authority over "issuers" (i.e., public companies) and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. DOJ also has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over "domestic concerns"—which include (a) U.S. citizens, nationals, and residents and (b) U.S. businesses and their officers, directors, employees, agents, or stockholders acting on the domestic concern's behalf—and certain foreign persons and businesses that act in furtherance of an FCPA violation while in the territory of the United States. Within DOJ, the Fraud Section of the Criminal Division has primary responsibility for all FCPA matters.[22] FCPA matters are handled primarily by the FCPA Unit within the Fraud Section, regularly working jointly with U.S. Attorneys' Offices around the country.

DOJ maintains a website dedicated to the FCPA and its enforcement at http://www.justice.gov/criminal/fraud/fcpa/. The website provides translations of the FCPA in numerous languages, relevant legislative history, and selected documents from FCPA-related prosecutions and resolutions since 1977, including charging documents, plea agreements, deferred prosecution agreements, non-prosecution agreements, press releases, and other relevant pleadings and court decisions. The website also provides copies of opinions issued in response to requests by companies and individuals under DOJ's FCPA opinion procedure. The procedures for submitting a request for an opinion can be found at http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf and are discussed further in Chapter 9. Individuals and companies wishing to disclose information about potential FCPA violations are encouraged to contact the FCPA Unit at the telephone number or email address above.

Securities and Exchange Commission

SEC is responsible for civil enforcement of the FCPA over issuers and their officers, directors, employees, agents,

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SEC Contact Information

FCPA Unit Chief
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U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Online: Tips, Complaints, and Referrals website
http://www.sec.gov/complaint/tipscomplaint.shtml

Office of Investor Education and Advocacy:
(800) SEC-0330

or stockholders acting on the issuer's behalf. SEC's Division of Enforcement has responsibility for investigating and prosecuting FCPA violations. In 2010, SEC's Enforcement Division created a specialized FCPA Unit, with attorneys in Washington, D.C. and in regional offices around the country, to focus specifically on FCPA enforcement. The Unit investigates potential FCPA violations; facilitates coordination with DOJ's FCPA program and with other federal and international law enforcement partners; uses its expert knowledge of the law to promote consistent enforcement of the FCPA; analyzes tips, complaints, and referrals regarding allegations of foreign bribery; and conducts public outreach to raise awareness of anti-corruption efforts and good corporate governance programs.

The FCPA Unit maintains a "Spotlight on FCPA" section on SEC's website at http://www.sec.gov/spotlight/fcpa.shtml. The website, which is updated regularly, provides general information about the Act, links to all SEC enforcement actions involving the FCPA, including both federal court actions and administrative proceedings, and contains other useful information.

Individuals and companies with information about possible FCPA violations by issuers may report them to the Enforcement Division via SEC's online Tips, Complaints and Referral system, http://www.sec.gov/complaint/tipscomplaint.shtml. They may also submit information to SEC's Office of the Whistleblower through the same online system or by contacting the Office of the Whistleblower at (202) 551-4790. Additionally, investors with questions about the FCPA can call the Office of Investor Education and Advocacy at (800) SEC-0330.

For more information about SEC's Whistleblower Program, under which certain eligible whistleblowers may be entitled to a monetary award if their information leads to certain SEC actions, see Chapter 8.

Law Enforcement Partners

DOJ's FCPA Unit regularly works with the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. The FBI's International Corruption Unit has primary responsibility for international corruption and fraud investigations and coordinates the FBI's national FCPA enforcement program. The FBI also has a dedicated FCPA squad of FBI special agents (located in the Washington Field Office) that is responsible for investigating many, and providing support for all, of the FBI's FCPA investigations. In addition, the Department of Homeland Security and the Internal Revenue Service-Criminal Investigation regularly investigate potential FCPA violations. A number of other agencies are also involved in the fight against international corruption, including the Department of Treasury's Office of Foreign Assets Control, which has helped lead a number of FCPA investigations.

Departments of Commerce and State

Besides enforcement efforts by DOJ and SEC, the U.S. government is also working to address corruption abroad and level the playing field for U.S. businesses through the efforts of the Departments of Commerce and State. Both Commerce and State advance anti-corruption and good governance initiatives globally and regularly assist U.S. companies doing business overseas in several

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important ways. Both agencies encourage U.S. businesses to seek the assistance of U.S embassies when they are confronted with bribe solicitations or other corruption-related issues overseas.[23]

The Department of Commerce offers a number of important resources for businesses, including the International Trade Administration's United States and Foreign Commercial Service (Commercial Service). The Commercial Service has export and industry specialists located in over 100 U.S. cities and 70 countries who are available to provide counseling and other assistance to U.S. businesses, particularly small and medium-sized companies, regarding exporting their products and services. Among other things, these specialists can help a U.S. company conduct due diligence when choosing business partners or agents overseas. The International Company Profile Program, for instance, can be part of a U.S. business' evaluation of potential overseas business partners.[24] Businesses may contact the Commercial Service through its website, http://export.gov/eac/, or directly at its domestic and foreign offices.[25]

Additionally, the Department of Commerce's Office of the General Counsel maintains a website, http://www.commerce.gov/os/ogc/transparency-and-anti-bribery-initiatives, that contains recent articles and speeches, links to translations of the FCPA, a catalogue of anti-corruption resources, and a list of international conventions and initiatives. The Trade Compliance Center in the Department of Commerce's International Trade Administration hosts a website with anti-bribery resources, http://tcc.export.gov/Bribery. This website contains an online form through which U.S. companies can report allegations of foreign bribery by foreign competitors in international business transactions.[26] The Department of Commerce also provides information to companies through a number of U.S. and international publications designed to assist firms in complying with anti-corruption laws. For example, the Department of Commerce has included a new anti-corruption section in its Country Commercial Guides, prepared by market experts at U.S. embassies worldwide, that contains information on market conditions for more than 100 countries, including information on the FCPA for exporters.[27] The Department of Commerce has also published a guide, *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*, which contains information about corporate compliance programs for businesses involved in international trade.[28]

The Departments of Commerce and State also provide advocacy support, when determined to be in the national interest, for U.S. companies bidding for foreign government contracts. The Department of Commerce's Advocacy Center, for example, supports U.S. businesses competing against foreign companies for international contracts, such as by arranging for the delivery of an advocacy message by U.S. government officials or assisting with unanticipated problems such as suspected bribery by a competitor.[29] The Department of State's Bureau of Economic and Business Affairs (specifically, its Office of Commercial and Business Affairs) similarly assists U.S. firms doing business overseas by providing advocacy on behalf of U.S. businesses and identifying risk areas for U.S. businesses; more information is available on its website, http://www.state.gov/e/eb/cba/. Also, the Department of State's economic officers serving overseas provide commercial advocacy and support for U.S. companies at the many overseas diplomatic posts where the Commercial Service is not represented.

The Department of State promotes U.S. government interests in addressing corruption internationally through country-to-country diplomatic engagement; development of and follow-through on international commitments relating to corruption; promotion of high-level political engagement (e.g., the G20 Anticorruption Action Plan); public outreach in foreign countries; and support for building the capacity of foreign partners to combat corruption. In fiscal year 2009, the U.S. government provided more than $1 billion for anti-corruption and related good governance assistance abroad.

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The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) manages U.S. participation in many multilateral anti-corruption political and legal initiatives at the global and regional level. INL also funds and coordinates significant efforts to assist countries with combating corruption through legal reform, training, and other capacity-building efforts. Inquiries about the U.S. government's general anti-corruption efforts and implementation of global and regional anti-corruption initiatives may be directed to INL on its website, http://www.state.gov/j/inl/c/crime/corr/index.htm, or by email to: anticorruption@state.gov. In addition, the U.S. Agency for International Development (USAID) has developed several anti-corruption programs and publications, information about which can be found at http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/promoting-accountability-transparency. Finally, the Department of State's brochure "Fighting Global Corruption: Business Risk Management," available at http://www.ogc.doc.gov/pdfs/Fighting_Global_Corruption.pdf, provides guidance about corporate compliance programs as well as international anti-corruption initiatives.

International Landscape: Global Anti-Corruption Efforts

In recent years, there has been a growing international consensus that corruption must be combated, and the United States and other countries are parties to a number of international anti-corruption conventions. Under these conventions, countries that are parties undertake commitments to adopt a range of preventive and criminal law measures to combat corruption. The conventions incorporate review processes that allow the United States to monitor other countries to ensure that they are meeting their international obligations. Likewise, these processes in turn permit other parties to monitor the United States' anti-corruption laws and enforcement to ensure that such enforcement and legal frameworks are consistent with the United States' treaty obligations.[30] U.S. officials regularly address the subject of corruption with our foreign counterparts to raise awareness of the importance of fighting corruption and urge stronger enforcement of anti-corruption laws and policies.

OECD Working Group on Bribery and the Anti-Bribery Convention

The OECD was founded in 1961 to stimulate economic progress and world trade. As noted, the Anti-Bribery Convention requires its parties to criminalize the bribery of foreign public officials in international business transactions.[31] As of November 1, 2012, there were 39 parties to the Anti-Bribery Convention: 34 OECD member countries (including the United States) and five non-OECD member countries (Argentina, Brazil, Bulgaria, the Russian Federation, and South Africa). All of these parties are also members of the OECD Working Group on Bribery (Working Group).[32]

The Working Group is responsible for monitoring the implementation of the Anti-Bribery Convention, the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and related instruments. Its members meet quarterly to review and monitor implementation of the Anti-Bribery Convention by member states around the world. Each party undergoes periodic peer review.[33] This peer-review monitoring system is conducted in three phases. The Phase 1 review includes an in-depth assessment of each country's domestic laws implementing the Convention. The Phase 2 review examines the effectiveness of each country's laws and anti-bribery efforts. The final phase is a permanent cycle of peer review (the first cycle of which is referred to as the Phase 3 review) that evaluates a country's enforcement actions and results, as well as the country's efforts to address weaknesses identified during the Phase 2 review.[34] All of the monitoring reports for the parties to the Convention can be found on the OECD website and can be a useful resource about the foreign bribery laws of the OECD Working Group member countries.[35]

The United States was one of the first countries to undergo all three phases of review. The reports and appendices can be found on DOJ's and SEC's websites.[36] In its

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Phase 3 review of the United States, which was completed in October 2010, the Working Group commended U.S. efforts to fight transnational bribery and highlighted a number of best practices developed by the United States. The report also noted areas where the United States' anti-bribery efforts could be improved, including consolidating publicly available information on the application of the FCPA and enhancing awareness among small- and medium-sized companies about the prevention and detection of foreign bribery. This guide is, in part, a response to these Phase 3 recommendations and is intended to help businesses and individuals better understand the FCPA.[37]

U.N. Convention Against Corruption

The United States is a state party to the United Nations Convention Against Corruption (UNCAC), which was adopted by the U.N. General Assembly on October 31, 2003, and entered into force on December 14, 2005.[38] The United States ratified the UNCAC on October 30, 2006. The UNCAC requires parties to criminalize a wide range of corrupt acts, including domestic and foreign bribery and related offenses such as money laundering and obstruction of justice. The UNCAC also establishes guidelines for the creation of anti-corruption bodies, codes of conduct for public officials, transparent and objective systems of procurement, and enhanced accounting and auditing standards for the private sector. A peer review mechanism assesses the implementation of the UNCAC by parties to the Convention, with a focus in the first round on criminalization and law enforcement as well as international legal cooperation.[39] The United States has been reviewed under the Pilot Review Programme, the report of which is available on DOJ's website. As of November 1, 2012, 163 countries were parties to the UNCAC.[40]

Other Anti-Corruption Conventions

The Inter-American Convention Against Corruption (IACAC) was the first international anti-corruption convention, adopted in March 1996 in Caracas, Venezuela, by members of the Organization of American States.[41] The IACAC requires parties (of which the United States is one) to criminalize both foreign and domestic bribery. A body known as the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC) monitors parties' compliance with the IACAC. As of November 1, 2012, 31 countries were parties to MESICIC.

The Council of Europe established the Group of States Against Corruption (GRECO) in 1999 to monitor countries' compliance with the Council of Europe's anti-corruption standards, including the Council of Europe's Criminal Law Convention on Corruption.[42] These standards include prohibitions on the solicitation and receipt of bribes, as well as foreign bribery. As of November 1, 2012, GRECO member states, which need not be members of the Council of Europe, include more than 45 European countries and the United States.[43]

The United States has been reviewed under both MESICIC and GRECO, and the reports generated by those reviews are available on DOJ's website.

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THE FCPA: ANTI-BRIBERY PROVISIONS

The FCPA addresses the problem of international corruption in two ways: (1) the anti-bribery provisions, which are discussed below, prohibit individuals and businesses from bribing foreign government officials in order to obtain or retain business and (2) the accounting provisions, which are discussed in Chapter 3, impose certain record keeping and internal control requirements on issuers, and prohibit individuals and companies from knowingly falsifying an issuer's books and records or circumventing or failing to implement an issuer's system of internal controls. Violations of the FCPA can lead to civil and criminal penalties, sanctions, and remedies, including fines, disgorgement, and/or imprisonment.

In general, the FCPA prohibits offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business.[44]

Who Is Covered by the Anti-Bribery Provisions?

The FCPA's anti-bribery provisions apply broadly to three categories of persons and entities: (1) "issuers" and their officers, directors, employees, agents, and shareholders; (2) "domestic concerns" and their officers, directors, employees, agents, and shareholders; and (3) certain persons and entities, other than issuers and domestic concerns, acting while in the territory of the United States.

Issuers—15 U.S.C. § 78dd-1

Section 30A of the Securities Exchange Act of 1934 (the Exchange Act), which can be found at 15 U.S.C. § 78dd-1, contains the anti-bribery provision governing

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How Can I Tell If My Company Is an "Issuer"?

- It is listed on a national securities exchange in the United States (either stock or American Depository Receipts); or
- The company's stock trades in the over-the-counter market in the United States and the company is required to file SEC reports.
- To see if your company files SEC reports, go to SEC's website at http://www.sec.gov/edgar/searchedgar/webusers.htm.

issuers.[45] A company is an "issuer" under the FCPA if it has a class of securities registered under Section 12 of the Exchange Act[46] or is required to file periodic and other reports with SEC under Section 15(d) of the Exchange Act.[47] In practice, this means that any company with a class of securities listed on a national securities exchange in the United States, or any company with a class of securities quoted in the over-the-counter market in the United States and required to file periodic reports with SEC, is an issuer. A company thus need not be a U.S. company to be an issuer. Foreign companies with American Depository Receipts that are listed on a U.S. exchange are also issuers.[48] As of December 31, 2011, 965 foreign companies were registered with SEC.[49] Officers, directors, employees, agents, or stockholders acting on behalf of an issuer (whether U.S. or foreign nationals), and any co-conspirators, also can be prosecuted under the FCPA.[50]

Domestic Concerns—15 U.S.C. § 78dd-2

The FCPA also applies to "domestic concerns." [51] A domestic concern is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States or its states, territories, possessions, or commonwealths or that has its principal place of business in the United States.[52] Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern, including foreign nationals or companies, are also covered.[53]

Territorial Jurisdiction—15 U.S.C. § 78dd-3

The FCPA also applies to certain foreign nationals or entities that are not issuers or domestic concerns.[54] Since 1998, the FCPA's anti-bribery provisions have applied to foreign persons and foreign non-issuer entities that, either directly or through an agent, engage in *any* act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the United States.[55] Also, officers, directors, employees, agents, or stockholders acting on behalf of such persons or entities may be subject to the FCPA's anti-bribery prohibitions.[56]

What Jurisdictional Conduct Triggers the Anti-Bribery Provisions?

The FCPA's anti-bribery provisions can apply to conduct both inside and outside the United States. Issuers and domestic concerns—as well as their officers, directors, employees, agents, or stockholders—may be prosecuted for using the U.S. mails or any means or instrumentality of interstate commerce in furtherance of a corrupt payment to a foreign official. The Act defines "interstate commerce" as "trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof ...."[57] The term also includes the *intrastate* use of any interstate means of communication, or any other interstate instrumentality.[58] Thus, placing a telephone call or sending an e-mail, text message, or fax from, to, or through the United States involves interstate commerce—as does sending a wire transfer from or to a U.S. bank or otherwise using the U.S. banking system, or traveling across state borders or internationally to or from the United States.

Those who are not issuers or domestic concerns may be prosecuted under the FCPA if they directly, or through an agent, engage in *any* act in furtherance of a corrupt payment while in the territory of the United States, regardless of

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whether they utilize the U.S. mails or a means or instrumentality of interstate commerce.[59] Thus, for example, a foreign national who attends a meeting in the United States that furthers a foreign bribery scheme may be subject to prosecution, as may any co-conspirators, even if they did not themselves attend the meeting. A foreign national or company may also be liable under the FCPA if it aids and abets, conspires with, or acts as an agent of an issuer or domestic concern, regardless of whether the foreign national or company itself takes any action in the United States.[60]

In addition, under the "alternative jurisdiction" provision of the FCPA enacted in 1998, U.S. companies or persons may be subject to the anti-bribery provisions even if they act outside the United States.[61] The 1998 amendments to the FCPA expanded the jurisdictional coverage of the Act by establishing an alternative basis for jurisdiction, that is, jurisdiction based on the nationality principle.[62] In particular, the 1998 amendments removed the requirement that there be a use of interstate commerce (e.g., wire, email, telephone call) for acts in furtherance of a corrupt payment to a foreign official by U.S. companies and persons occurring wholly outside of the United States.[63]

What Is Covered?—The Business Purpose Test

The FCPA applies only to payments intended to induce or influence a foreign official to use his or her position "in order to assist ... in obtaining or retaining business for or with, or directing business to, any person."[64] This requirement is known as the "business purpose test" and is broadly interpreted.[65]

Not surprisingly, many enforcement actions involve bribes to obtain or retain government contracts.[66] The FCPA also prohibits bribes in the conduct of business or

Hypothetical: FCPA Jurisdiction

Company A, a Delaware company with its principal place of business in New York, is a large energy company that operates globally, including in a number of countries that have a high risk of corruption, such as Foreign Country. Company A's shares are listed on a national U.S. stock exchange. Company A enters into an agreement with a European company (EuroCo) to submit a joint bid to the Oil Ministry to build a refinery in Foreign Country. EuroCo is not an issuer.

Executives of Company A and EuroCo meet in New York to discuss how to win the bid and decide to hire a purported third-party consultant (Intermediary) and have him use part of his "commission" to bribe high-ranking officials within the Oil Ministry. Intermediary meets with executives at Company A and EuroCo in New York to finalize the scheme. Eventually, millions of dollars in bribes are funneled from the United States and Europe through Intermediary to high-ranking officials at the Oil Ministry, and Company A and EuroCo win the contract. A few years later, a front page article alleging that the contract was procured through bribery appears in Foreign Country, and DOJ and SEC begin investigating whether the FCPA was violated.

Based on these facts, which entities fall within the FCPA's jurisdiction?

All of the entities easily fall within the FCPA's jurisdiction. Company A is both an "issuer" and a "domestic concern" under the FCPA, and Intermediary is an "agent" of Company A. EuroCo and Intermediary are also subject to the FCPA's territorial jurisdiction provision based on their conduct while in the United States. Moreover, even if EuroCo and Intermediary had never taken any actions in the territory of the United States, they can still be subject to jurisdiction under a traditional application of conspiracy law and may be subject to substantive FCPA charges under *Pinkerton* liability, namely, being liable for the reasonably foreseeable substantive FCPA crimes committed by a co-conspirator in furtherance of the conspiracy.

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Examples of Actions Taken to Obtain or Retain Business

- Winning a contract
- Influencing the procurement process
- Circumventing the rules for importation of products
- Gaining access to non-public bid tender information
- Evading taxes or penalties
- Influencing the adjudication of lawsuits or enforcement actions
- Obtaining exceptions to regulations
- Avoiding contract termination

to gain a business advantage.[67] For example, bribe payments made to secure favorable tax treatment, to reduce or eliminate customs duties, to obtain government action to prevent competitors from entering a market, or to circumvent a licensing or permit requirement, all satisfy the business purpose test.[68]

In 2004, the U.S. Court of Appeals for the Fifth Circuit addressed the business purpose test in *United States v. Kay* and held that bribes paid to obtain favorable tax treatment—which reduced a company's customs duties and sales taxes on imports—could constitute payments made to "obtain or retain" business within the meaning of the FCPA.[69] The court explained that in enacting the FCPA, "Congress meant to prohibit a range of payments wider than only those that directly influence the acquisition or retention of government contracts or similar commercial or industrial arrangements."[70] The *Kay* court found that "[t]he congressional target was bribery paid to engender assistance in improving the business opportunities of the payor or his beneficiary, irrespective of whether that assistance be direct or indirect, and irrespective of whether it be related to administering the law, awarding, extending, or renewing a contract, or executing or preserving an agreement."[71] Accordingly, *Kay* held that payments to obtain favorable tax treatment can, under appropriate circumstances, violate the FCPA:

> Avoiding or lowering taxes reduces operating costs and thus increases profit margins, thereby freeing up funds that the business is otherwise legally obligated to expend. And this, in turn, enables it to take any number of actions to the disadvantage of competitors. Bribing foreign officials to lower taxes and customs duties certainly *can* provide an unfair advantage over competitors and thereby be of assistance to the payor in obtaining or retaining business.
>
> * * *
>
> [W]e hold that Congress intended for the FCPA to apply broadly to payments intended to assist the payor, either directly or indirectly, in obtaining or retaining business for some person, and that bribes paid to foreign tax officials to secure illegally reduced customs and tax liability constitute a type of payment that can fall within this broad coverage.[72]

Paying Bribes to Customs Officials

In 2010, a global freight forwarding company and six of its corporate customers in the oil and gas industry resolved charges that they paid bribes to customs officials. The companies bribed customs officials in more than ten countries in exchange for such benefits as:

- evading customs duties on imported goods
- improperly expediting the importation of goods and equipment
- extending drilling contracts and lowering tax assessments
- obtaining false documentation related to temporary import permits for drilling rigs
- enabling the release of drilling rigs and other equipment from customs officials

In many instances, the improper payments at issue allowed the company to carry out its existing business, which fell within the FCPA's prohibition on corrupt payments made for the purpose of "retaining" business. The seven companies paid a total of more than $235 million in civil and criminal sanctions and disgorgement.

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In short, while the FCPA does not cover every type of bribe paid around the world for every purpose, it does apply broadly to bribes paid to help obtain or retain business, which can include payments made to secure a wide variety of unfair business advantages.[73]

What Does "Corruptly" Mean?

To violate the FCPA, an offer, promise, or authorization of a payment, or a payment, to a government official must be made "corruptly."[74] As Congress noted when adopting the FCPA, the word "corruptly" means an intent or desire to wrongfully influence the recipient:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position; for example, wrongfully to direct business to the payor or his client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function.[75]

Where corrupt intent is present, the FCPA prohibits paying, offering, or promising to pay money or anything of value (or authorizing the payment or offer).[76] By focusing on intent, the FCPA does not require that a corrupt act succeed in its purpose.[77] Nor must the foreign official actually solicit, accept, or receive the corrupt payment for the bribe payor to be liable.[78] For example, in one case, a specialty chemical company promised Iraqi government officials approximately $850,000 in bribes for an upcoming contract. Although the company did not, in the end, make the payment (the scheme was thwarted by the U.S. government's investigation), the company still violated the FCPA and was held accountable.[79]

Also, as long as the offer, promise, authorization, or payment is made corruptly, the actor need not know the identity of the recipient; the attempt is sufficient.[80] Thus, an executive who authorizes others to pay "whoever you need to" in a foreign government to obtain a contract has violated the FCPA—even if no bribe is ultimately offered or paid.

What Does "Willfully" Mean and When Does It Apply?

In order for an individual defendant to be criminally liable under the FCPA, he or she must act "willfully."[81] Proof of willfulness is not required to establish corporate criminal or civil liability,[82] though proof of corrupt intent is.

The term "willfully" is not defined in the FCPA, but it has generally been construed by courts to connote an act committed voluntarily and purposefully, and with a bad purpose, i.e., with "knowledge that [a defendant] was doing a 'bad' act under the general rules of law."[83] As the Supreme Court explained in *Bryan v. United States*, "[a]s a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' In other words, in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'"[84]

Notably, as both the Second Circuit and Fifth Circuit Courts of Appeals have found, the FCPA does not require the government to prove that a defendant was specifically aware of the FCPA or knew that his conduct violated the FCPA.[85] To be guilty, a defendant must act with a bad purpose, i.e., know generally that his conduct is unlawful.

What Does "Anything of Value" Mean?

In enacting the FCPA, Congress recognized that bribes can come in many shapes and sizes—a broad range of unfair benefits[86]—and so the statute prohibits the corrupt "offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of *anything of value* to" a foreign official.[87]

An improper benefit can take many forms. While cases often involve payments of cash (sometimes in the guise of "consulting fees" or "commissions" given through intermediaries), others have involved travel expenses and

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expensive gifts. Like the domestic bribery statute, the FCPA does not contain a minimum threshold amount for corrupt gifts or payments.[88] Indeed, what might be considered a modest payment in the United States could be a larger and much more significant amount in a foreign country.

Regardless of size, for a gift or other payment to violate the statute, the payor must have corrupt intent—that is, the intent to improperly influence the government official. The corrupt intent requirement protects companies that engage in the ordinary and legitimate promotion of their businesses while targeting conduct that seeks to improperly induce officials into misusing their positions. Thus, it is difficult to envision any scenario in which the provision of cups of coffee, taxi fare, or company promotional items of nominal value would ever evidence corrupt intent, and neither DOJ nor SEC has ever pursued an investigation on the basis of such conduct. Moreover, as in all areas of federal law enforcement, DOJ and SEC exercise discretion in deciding which cases promote law enforcement priorities and justify investigation. Certain patterns, however, have emerged: DOJ's and SEC's anti-bribery enforcement actions have focused on small payments and gifts only when they comprise part of a systemic or long-standing course of conduct that evidences a scheme to corruptly pay foreign officials to obtain or retain business. These assessments are necessarily fact specific.

Cash

The most obvious form of corrupt payment is large amounts of cash. In some instances, companies have maintained cash funds specifically earmarked for use as bribes. One U.S. issuer headquartered in Germany disbursed corrupt payments from a corporate "cash desk" and used offshore bank accounts to bribe government officials to win contracts.[89] In another instance, a four-company joint venture used its agent to pay $5 million in bribes to a Nigerian political party.[90] The payments were made to the agent in suitcases of cash (typically in $1 million installments), and, in one instance, the trunk of a car when the cash did not fit into a suitcase.[91]

Gifts, Travel, Entertainment, and Other Things of Value

A small gift or token of esteem or gratitude is often an appropriate way for business people to display respect for each other. Some hallmarks of appropriate gift-giving are when the gift is given openly and transparently, properly recorded in the giver's books and records, provided only to reflect esteem or gratitude, and permitted under local law.

Items of nominal value, such as cab fare, reasonable meals and entertainment expenses, or company promotional items, are unlikely to improperly influence an official, and, as a result, are not, without more, items that have resulted in enforcement action by DOJ or SEC. The larger or more extravagant the gift, however, the more likely it was given with an improper purpose. DOJ and SEC enforcement cases thus have involved single instances of large, extravagant gift-giving (such as sports cars, fur coats, and other luxury items) as well as widespread gifts of smaller items as part of a pattern of bribes.[92] For example, in one case brought by DOJ and SEC, a defendant gave a government official a country club membership fee and a generator, as well as household maintenance expenses, payment of cell phone bills, an automobile worth $20,000, and limousine services. The same official also received $250,000 through a third-party agent.[93]

In addition, a number of FCPA enforcement actions have involved the corrupt payment of travel and entertainment expenses. Both DOJ and SEC have brought cases where these types of expenditures occurred in conjunction with other conduct reflecting systemic bribery or other clear indicia of corrupt intent.

A case involving a California-based telecommunications company illustrates the types of improper travel and entertainment expenses that may violate the FCPA.[94] Between 2002 and 2007, the company spent nearly $7 million on approximately 225 trips for its customers in order to obtain systems contracts in China, including for employees of Chinese state-owned companies to travel to popular tourist destinations in the United States.[95] Although the trips were purportedly for the individuals to conduct training at

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Examples of Improper Travel and Entertainment

- a $12,000 birthday trip for a government decision-maker from Mexico that included visits to wineries and dinners
- $10,000 spent on dinners, drinks, and entertainment for a government official
- a trip to Italy for eight Iraqi government officials that consisted primarily of sightseeing and included $1,000 in "pocket money" for each official
- a trip to Paris for a government official and his wife that consisted primarily of touring activities via a chauffeur-driven vehicle

the company's facilities, in reality, no training occurred on many of these trips and the company had no facilities at those locations. Approximately $670,000 of the $7 million was falsely recorded as "training" expenses.[96]

Likewise, a New Jersey-based telecommunications company spent millions of dollars on approximately 315 trips for Chinese government officials, ostensibly to inspect factories and train the officials in using the company's equipment.[97] In reality, during many of these trips, the officials spent little or no time visiting the company's facilities, but instead visited tourist destinations such as Hawaii, Las Vegas, the Grand Canyon, Niagara Falls, Disney World, Universal Studios, and New York City.[98] Some of the trips were characterized as "factory inspections" or "training" with government customers but consisted primarily or entirely of sightseeing to locations chosen by the officials, typically lasting two weeks and costing between $25,000 and $55,000 per trip. In some instances, the company gave the government officials $500 to $1,000 per day in spending money and paid all lodging, transportation, food, and entertainment expenses. The company either failed to record these expenses or improperly recorded them as "consulting fees" in its corporate books and records. The company also failed to implement appropriate internal controls to monitor the provision of travel and other things of value to Chinese government officials.[99]

Companies also may violate the FCPA if they give payments or gifts to third parties, like an official's family members, as an indirect way of corruptly influencing a foreign official. For example, one defendant paid personal bills and provided airline tickets to a cousin and close friend of the foreign official whose influence the defendant sought in obtaining contracts.[100] The defendant was convicted at trial and received a prison sentence.[101]

As part of an effective compliance program, a company should have clear and easily accessible guidelines and processes in place for gift-giving by the company's directors, officers, employees, and agents. Though not necessarily appropriate for every business, many larger companies have automated gift-giving clearance processes and have set clear monetary thresholds for gifts along with annual limitations, with limited exceptions for gifts approved by appropriate management. Clear guidelines and processes can be an effective and efficient means for controlling gift-giving, deterring improper gifts, and protecting corporate assets.

The FCPA does not prohibit gift-giving. Rather, just like its domestic bribery counterparts, the FCPA prohibits the payments of bribes, including those disguised as gifts.

Charitable Contributions

Companies often engage in charitable giving as part of legitimate local outreach. The FCPA does not prohibit charitable contributions or prevent corporations from acting as good corporate citizens. Companies, however, cannot use the pretense of charitable contributions as a way to funnel bribes to government officials.

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For example, a pharmaceutical company used charitable donations to a small local castle restoration charity headed by a foreign government official to induce the official to direct business to the company. Although the charity was a bona fide charitable organization, internal documents at the pharmaceutical company's subsidiary established that the payments were not viewed as charitable contributions but rather as "dues" the subsidiary was required to pay for assistance from the government official. The payments constituted a significant portion of the subsidiary's total promotional donations budget and were structured to allow the subsidiary to exceed its authorized limits. The payments

Hypothetical: Gifts, Travel, and Entertainment

Company A is a large U.S. engineering company with global operations in more than 50 countries, including a number that have a high risk of corruption, such as Foreign Country. Company A's stock is listed on a national U.S. stock exchange. In conducting its business internationally, Company A's officers and employees come into regular contact with foreign officials, including officials in various ministries and state-owned entities. At a trade show, Company A has a booth at which it offers free pens, hats, t-shirts, and other similar promotional items with Company A's logo. Company A also serves free coffee, other beverages, and snacks at the booth. Some of the visitors to the booth are foreign officials.

Is Company A in violation of the FCPA?

No. These are legitimate, bona fide expenditures made in connection with the promotion, demonstration, or explanation of Company A's products or services. There is nothing to suggest corrupt intent here. The FCPA does not prevent companies from promoting their businesses in this way or providing legitimate hospitality, including to foreign officials. Providing promotional items with company logos or free snacks as set forth above is an appropriate means of providing hospitality and promoting business. Such conduct has never formed the basis for an FCPA enforcement action.

At the trade show, Company A invites a dozen current and prospective customers out for drinks, and pays the moderate bar tab. Some of the current and prospective customers are foreign officials under the FCPA. Is Company A in violation of the FCPA?

No. Again, the FCPA was not designed to prohibit all forms of hospitality to foreign officials. While the cost here may be more substantial than the beverages, snacks, and promotional items provided at the booth, and the invitees specifically selected, there is still nothing to suggest corrupt intent.

Two years ago, Company A won a long-term contract to supply goods and services to the state-owned Electricity Commission in Foreign Country. The Electricity Commission is 100% owned, controlled, and operated by the government of Foreign Country, and employees of the Electricity Commission are subject to Foreign Country's domestic bribery laws. Some Company A executives are in Foreign Country for meetings with officials of the Electricity Commission. The General Manager of the Electricity Commission was recently married, and during the trip Company A executives present a moderately priced crystal vase to the General Manager as a wedding gift and token of esteem. Is Company A in violation of the FCPA?

No. It is appropriate to provide reasonable gifts to foreign officials as tokens of esteem or gratitude. It is important that such gifts be made openly and transparently, properly recorded in a company's books and records, and given only where appropriate under local law, customary where given, and reasonable for the occasion.

During the course of the contract described above, Company A periodically provides training to Electricity Commission employees at its facilities in Michigan. The training is paid for by the Electricity Commission as part of the contract. Senior officials of the Electricity Commission inform Company A that they want to inspect the facilities and ensure that the training is working well. Company A pays for the airfare, hotel, and transportation for the

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Electricity Commission senior officials to travel to Michigan to inspect Company A's facilities. Because it is a lengthy international flight, Company A agrees to pay for business class airfare, to which its own employees are entitled for lengthy flights. The foreign officials visit Michigan for several days, during which the senior officials perform an appropriate inspection. Company A executives take the officials to a moderately priced dinner, a baseball game, and a play. Do any of these actions violate the FCPA?

No. Neither the costs associated with training the employees nor the trip for the senior officials to the Company's facilities in order to inspect them violates the FCPA. Reasonable and bona fide promotional expenditures do not violate the FCPA. Here, Company A is providing training to the Electricity Commission's employees and is hosting the Electricity Commission senior officials. Their review of the execution and performance of the contract is a legitimate business purpose. Even the provision of business class airfare is reasonable under the circumstances, as are the meals and entertainment, which are only a small component of the business trip.

Would this analysis be different if Company A instead paid for the senior officials to travel first-class with their spouses for an all-expenses-paid, week-long trip to Las Vegas, where Company A has no facilities?

Yes. This conduct almost certainly violates the FCPA because it evinces a corrupt intent. Here, the trip does not appear to be designed for any legitimate business purpose, is extravagant, includes expenses for the officials' spouses, and therefore appears to be designed to corruptly curry favor with the foreign government officials. Moreover, if the trip were booked as a legitimate business expense—such as the provision of training at its facilities—Company A would also be in violation of the FCPA's accounting provisions. Furthermore, this conduct suggests deficiencies in Company A's internal controls.

Company A's contract with the Electricity Commission is going to expire, and the Electricity Commission is offering the next contract through its tender process. An employee of the Electricity Commission contacts Company A and offers to provide Company A with confidential, non-public bid information from Company A's competitors if Company A will pay for a vacation to Paris for him and his girlfriend. Employees of Company A accede to the official's request, pay for the vacation, receive the confidential bid information, and yet still do not win the contract. Has Company A violated the FCPA?

Yes. Company A has provided things of value to a foreign official for the purpose of inducing the official to misuse his office and to gain an improper advantage. It does not matter that it was the foreign official who first suggested the illegal conduct or that Company A ultimately was not successful in winning the contract. This conduct would also violate the FCPA's accounting provisions if the trip were booked as a legitimate business expense and suggests deficiencies in Company A's internal controls.

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also were not in compliance with the company's internal policies, which provided that charitable donations generally should be made to healthcare institutions and relate to the practice of medicine.[102]

Proper due diligence and controls are critical for charitable giving. In general, the adequacy of measures taken to prevent misuse of charitable donations will depend on a risk-based analysis and the specific facts at hand. In Opinion Procedure Release No. 10-02, DOJ described the due diligence and controls that can minimize the likelihood of an FCPA violation. In that matter, a Eurasian-based subsidiary of a U.S. non-governmental organization was asked by an agency of a foreign government to make a grant to a local microfinance institution (MFI) as a prerequisite to the subsidiary's transformation to bank status. The subsidiary proposed contributing $1.42 million to a local MFI to satisfy the request. The subsidiary undertook an extensive, three-stage due diligence process to select the proposed grantee and imposed significant controls on the proposed grant, including ongoing monitoring and auditing, earmarking funds for capacity building, prohibiting compensation of board members, and implementing anti-corruption compliance provisions. DOJ explained that it would not take any enforcement action because the company's due diligence and the controls it planned to put in place sufficed to prevent an FCPA violation.

Other opinion releases also address charitable-type grants or donations. Under the facts presented in those releases, DOJ approved the proposed grant or donation,[103] based on due diligence measures and controls such as:

- certifications by the recipient regarding compliance with the FCPA;[104]
- due diligence to confirm that none of the recipient's officers were affiliated with the foreign government at issue;[105]
- a requirement that the recipient provide audited financial statements;[106]
- a written agreement with the recipient restricting the use of funds;[107]
- steps to ensure that the funds were transferred to a valid bank account;[108]
- confirmation that the charity's commitments were met before funds were disbursed;[109] and
- on-going monitoring of the efficacy of the program.[110]

Legitimate charitable giving does not violate the FCPA. Compliance with the FCPA merely requires that charitable giving not be used as a vehicle to conceal payments made to corruptly influence foreign officials.

Five Questions to Consider When Making Charitable Payments in a Foreign Country:

1. What is the purpose of the payment?
2. Is the payment consistent with the company's internal guidelines on charitable giving?
3. Is the payment at the request of a foreign official?
4. Is a foreign official associated with the charity and, if so, can the foreign official make decisions regarding your business in that country?
5. Is the payment conditioned upon receiving business or other benefits?

Who Is a Foreign Official?

The FCPA's anti-bribery provisions apply to corrupt payments made to (1) "any foreign official"; (2) "any foreign political party or official thereof"; (3) "any candidate for foreign political office"; or (4) any person, while knowing that all or a portion of the payment will be offered, given, or promised to an individual falling within one of these three categories.[111] Although the statute distinguishes between a "foreign official," "foreign political party or official thereof," and "candidate for foreign political office," the term "foreign official" in this guide generally refers to an individual falling within any of these three categories.

The FCPA defines "foreign official" to include:

> any officer or employee of a foreign government or any department, agency, or instrumentality thereof,

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> or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.[112]

As this language makes clear, the FCPA broadly applies to corrupt payments to "any" officer or employee of a foreign government and to those acting on the foreign government's behalf.[113] The FCPA thus covers corrupt payments to low-ranking employees and high-level officials alike.[114]

The FCPA prohibits payments to foreign *officials*, not to foreign *governments*.[115] That said, companies contemplating contributions or donations to foreign governments should take steps to ensure that no monies are used for corrupt purposes, such as the personal benefit of individual foreign officials.

Department, Agency, or Instrumentality of a Foreign Government

Foreign officials under the FCPA include officers or employees of a department, agency, or instrumentality of a foreign government. When a foreign government is organized in a fashion similar to the U.S. system, what constitutes a government department or agency is typically clear (e.g., a ministry of energy, national security agency, or transportation authority).[116] However, governments can be organized in very different ways.[117] Many operate through state-owned and state-controlled entities, particularly in such areas as aerospace and defense manufacturing, banking and finance, healthcare and life sciences, energy and extractive industries, telecommunications, and transportation.[118] By including officers or employees of agencies and instrumentalities within the definition of "foreign official," the FCPA accounts for this variability.

The term "instrumentality" is broad and can include state-owned or state-controlled entities. Whether a particular entity constitutes an "instrumentality" under the FCPA requires a fact-specific analysis of an entity's ownership, control, status, and function.[119] A number of courts have approved final jury instructions providing a non-exclusive list of factors to be considered:

- the foreign state's extent of ownership of the entity;
- the foreign state's degree of control over the entity (including whether key officers and directors of the entity are, or are appointed by, government officials);
- the foreign state's characterization of the entity and its employees;
- the circumstances surrounding the entity's creation;
- the purpose of the entity's activities;
- the entity's obligations and privileges under the foreign state's law;
- the exclusive or controlling power vested in the entity to administer its designated functions;
- the level of financial support by the foreign state (including subsidies, special tax treatment, government-mandated fees, and loans);
- the entity's provision of services to the jurisdiction's residents;
- whether the governmental end or purpose sought to be achieved is expressed in the policies of the foreign government; and
- the general perception that the entity is performing official or governmental functions.[120]

Companies should consider these factors when evaluating the risk of FCPA violations and designing compliance programs.

DOJ and SEC have pursued cases involving instrumentalities since the time of the FCPA's enactment and have long used an analysis of ownership, control, status, and function to determine whether a particular entity is an agency or instrumentality of a foreign government. For example, the second-ever FCPA case charged by DOJ involved a California company that paid bribes through a Mexican corporation to two executives of a state-owned

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Mexican national oil company.[121] And in the early 1980s, DOJ and SEC brought cases involving a $1 million bribe to the chairman of Trinidad and Tobago's racing authority.[122]

DOJ and SEC continue to regularly bring FCPA cases involving bribes paid to employees of agencies and instrumentalities of foreign governments. In one such case, the subsidiary of a Swiss engineering company paid bribes to officials of a state-owned and controlled electricity commission. The commission was created by, owned by, and controlled by the Mexican government, and it had a monopoly on the transmission and distribution of electricity in Mexico. Many of the commission's board members were cabinet-level government officials, and the director was appointed by Mexico's president.[123] Similarly, in another recent case, Miami telecommunications executives were charged with paying bribes to employees of Haiti's state-owned and controlled telecommunications company. The telecommunications company was 97% owned and 100% controlled by the Haitian government, and its director was appointed by Haiti's president.[124]

While no one factor is dispositive or necessarily more important than another, as a practical matter, an entity is unlikely to qualify as an instrumentality if a government does not own or control a majority of its shares. However, there are circumstances in which an entity would qualify as an instrumentality absent 50% or greater foreign government ownership, which is reflected in the limited number of DOJ or SEC enforcement actions brought in such situations. For example, in addition to being convicted of funneling millions of dollars in bribes to two sitting presidents in two different countries, a French issuer's three subsidiaries were convicted of paying bribes to employees of a Malaysian telecommunications company that was 43% owned by Malaysia's Ministry of Finance. There, notwithstanding its minority ownership stake in the company, the Ministry held the status of a "special shareholder," had veto power over all major expenditures, and controlled important operational decisions.[125] In addition, most senior company officers were political appointees, including the Chairman and Director, the Chairman of the Board of the Tender Committee, and the Executive Director.[126] Thus, despite the Malaysian government having a minority shareholder position, the company was an instrumentality of the Malaysian government as the government nevertheless had substantial control over the company.

Companies and individuals should also remember that, whether an entity is an instrumentality of a foreign government or a private entity, commercial (i.e., private-to-private) bribery may still violate the FCPA's accounting provisions, the Travel Act, anti-money laundering laws, and other federal or foreign laws. Any type of corrupt payment thus carries a risk of prosecution.

Public International Organizations

In 1998, the FCPA was amended to expand the definition of "foreign official" to include employees and representatives of public international organizations.[127] A "public international organization" is any organization designated as such by Executive Order under the International Organizations Immunities Act, 22 U.S.C. § 288, or any other organization that the President so designates.[128] Currently, public international organizations include entities such as the World Bank, the International Monetary Fund, the World Intellectual Property Organization, the World Trade Organization, the OECD, the Organization of American States, and numerous others. A comprehensive list of organizations designated as "public international organizations" is contained in 22 U.S.C. § 288 and can also be found on the U.S. Government Printing Office website at http://www.gpo.gov/fdsys/.

How Are Payments to Third Parties Treated?

The FCPA expressly prohibits corrupt payments made through third parties or intermediaries.[129] Specifically, it covers payments made to "any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly,"[130] to a foreign official. Many companies doing business in a foreign country retain a local individual or company to help them conduct business. Although these foreign agents may provide entirely legitimate advice regarding local customs and procedures and may help facilitate business transactions,

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companies should be aware of the risks involved in engaging third-party agents or intermediaries. The fact that a bribe is paid by a third party does not eliminate the potential for criminal or civil FCPA liability.[131]

For instance, a four-company joint venture used two agents—a British lawyer and a Japanese trading company—to bribe Nigerian government officials in order to win a series of liquefied natural gas construction projects.[132] Together, the four multi-national corporations and the Japanese trading company paid a combined $1.7 billion in civil and criminal sanctions for their decade-long bribery scheme. In addition, the subsidiary of one of the companies pleaded guilty and a number of individuals, including the British lawyer and the former CEO of one of the companies' subsidiaries, received significant prison terms.

Similarly, a medical device manufacturer entered into a deferred prosecution agreement as the result of corrupt payments it authorized its local Chinese distributor to pay to Chinese officials.[133] Another company, a manufacturer of specialty chemicals, committed multiple FCPA violations through its agents in Iraq: a Canadian national and the Canadian's companies. Among other acts, the Canadian national paid and promised to pay more than $1.5 million in bribes to officials of the Iraqi Ministry of Oil to secure sales of a fuel additive. Both the company and the Canadian national pleaded guilty to criminal charges and resolved civil enforcement actions by SEC.[134]

In another case, the U.S. subsidiary of a Swiss freight forwarding company was charged with paying bribes on behalf of its customers in several countries.[135] Although the U.S. subsidiary was not an issuer under the FCPA, it was an "agent" of several U.S. issuers and was thus charged directly with violating the FCPA. Charges against the freight forwarding company and seven of its customers resulted in over $236.5 million in sanctions.[136]

Because Congress anticipated the use of third-party agents in bribery schemes—for example, to avoid actual knowledge of a bribe—it defined the term "knowing" in a way that prevents individuals and businesses from avoiding liability by putting "any person" between themselves and the foreign officials.[137] Under the FCPA, a person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if the person:

- is aware that [he] is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- has a firm belief that such circumstance exists or that such result is substantially certain to occur.[138]

Thus, a person has the requisite knowledge when he is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.[139] As Congress made clear, it meant to impose liability not only on those with actual knowledge of wrongdoing, but also on those who purposefully avoid actual knowledge:

> [T]he so-called "head-in-the-sand" problem—variously described in the pertinent authorities as "conscious disregard," "willful blindness" or "deliberate ignorance"—should be covered so that management officials could not take refuge from the Act's prohibitions by their unwarranted obliviousness to any action (or inaction), language or other "signaling device" that should reasonably alert them of the "high probability" of an FCPA violation.[140]

Common red flags associated with third parties include:

- excessive commissions to third-party agents or consultants;
- unreasonably large discounts to third-party distributors;
- third-party "consulting agreements" that include only vaguely described services;
- the third-party consultant is in a different line of business than that for which it has been engaged;
- the third party is related to or closely associated with the foreign official;

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- the third party became part of the transaction at the express request or insistence of the foreign official;
- the third party is merely a shell company incorporated in an offshore jurisdiction; and
- the third party requests payment to offshore bank accounts.

Businesses may reduce the FCPA risks associated with third-party agents by implementing an effective compliance program, which includes due diligence of any prospective foreign agents.

United States v. Kozeny, *et al.*

In December 2011, the U.S. Court of Appeals for the Second Circuit upheld a conscious avoidance instruction given during the 2009 trial of a businessman who was convicted of conspiring to violate the FCPA's anti-bribery provisions by agreeing to make payments to Azeri officials in a scheme to encourage the privatization of the Azerbaijan Republic's state oil company. The court of appeals found that the instruction did not lack a factual predicate, citing evidence and testimony at trial demonstrating that the defendant knew corruption was pervasive in Azerbaijan; that he was aware of his business partner's reputation for misconduct; that he had created two U.S. companies in order to shield himself and other investors from potential liability for payments made in violation of the FCPA; and that the defendant expressed concerns during a conference call about whether his business partner and company were bribing officials.

The court of appeals also rejected the defendant's contention that the conscious avoidance charge had improperly permitted the jury to convict him based on negligence, explaining that ample evidence in the record showed that the defendant had "serious concerns" about the legality of his partner's business practices "and worked to avoid learning exactly what [he] was doing," and noting that the district court had specifically instructed the jury not to convict based on negligence.

What Affirmative Defenses Are Available?

The FCPA's anti-bribery provisions contain two affirmative defenses: (1) that the payment was lawful under the written laws of the foreign country (the "local law" defense), and (2) that the money was spent as part of demonstrating a product or performing a contractual obligation (the "reasonable and bona fide business expenditure" defense). Because these are affirmative defenses, the defendant bears the burden of proving them.

The Local Law Defense

For the local law defense to apply, a defendant must establish that "the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country."[141] The defendant must establish that the payment was lawful under the foreign country's written laws and regulations at the time of the offense. In creating the local law defense in 1988, Congress sought "to make clear that the absence of written laws in a foreign official's country would not by itself be sufficient to satisfy this defense."[142] Thus, the fact that bribes may not be prosecuted under local law is insufficient to establish the defense. In practice, the local law defense arises infrequently, as the written laws and regulations of countries rarely, if ever, permit corrupt payments. Nevertheless, if a defendant can establish that conduct that otherwise falls within the scope of the FCPA's anti-bribery provisions was lawful under written, local law, he or she would have a defense to prosecution.

In *United States v. Kozeny*, the defendant unsuccessfully sought to assert the local law defense regarding the law of Azerbaijan. The parties disputed the contents and applicability of Azeri law, and each presented expert reports and testimony on behalf of their conflicting interpretations. The court ruled that the defendant could not invoke the FCPA's affirmative defense because Azeri law did not actually legalize the bribe payment. The court concluded that an exception under Azeri law relieving bribe payors who voluntarily

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disclose bribe payments to the authorities of criminal liability did not make the bribes legal.[143]

Reasonable and Bona Fide Expenditures

The FCPA allows companies to provide reasonable and bona fide travel and lodging expenses to a foreign official, and it is an affirmative defense where expenses are directly related to the promotion, demonstration, or explanation of a company's products or services, or are related to a company's execution or performance of a contract with a foreign government or agency.[144] Trips that are primarily for personal entertainment purposes, however, are not bona fide business expenses and may violate the FCPA's anti-bribery provisions.[145] Moreover, when expenditures, bona fide or not, are mischaracterized in a company's books and records, or where unauthorized or improper expenditures occur due to a failure to implement adequate internal controls, they may also violate the FCPA's accounting provisions. Purposeful mischaracterization of expenditures may also, of course, indicate a corrupt intent.

DOJ and SEC have consistently recognized that businesses, both foreign and domestic, are permitted to pay for reasonable expenses associated with the promotion of their products and services or the execution of existing contracts. In addition, DOJ has frequently provided guidance about legitimate promotional and contract-related expenses—addressing travel and lodging expenses in particular—through several opinion procedure releases. Under the circumstances presented in those releases,[146] DOJ opined that the following types of expenditures on behalf of foreign officials did not warrant FCPA enforcement action:

- travel and expenses to visit company facilities or operations;
- travel and expenses for training; and
- product demonstration or promotional activities, including travel and expenses for meetings.

Whether any particular payment is a bona fide expenditure necessarily requires a fact-specific analysis. But the following non-exhaustive list of safeguards, compiled from several releases, may be helpful to businesses in evaluating whether a particular expenditure is appropriate or may risk violating the FCPA:

- Do not select the particular officials who will participate in the party's proposed trip or program[147] or else select them based on pre-determined, merit-based criteria.[148]
- Pay all costs directly to travel and lodging vendors and/or reimburse costs only upon presentation of a receipt.[149]
- Do not advance funds or pay for reimbursements in cash.[150]
- Ensure that any stipends are reasonable approximations of costs likely to be incurred[151] and/or that expenses are limited to those that are necessary and reasonable.[152]
- Ensure the expenditures are transparent, both within the company and to the foreign government.[153]
- Do not condition payment of expenses on any action by the foreign official.[154]
- Obtain written confirmation that payment of the expenses is not contrary to local law.[155]
- Provide no additional compensation, stipends, or spending money beyond what is necessary to pay for actual expenses incurred.[156]
- Ensure that costs and expenses on behalf of the foreign officials will be accurately recorded in the company's books and records.[157]

In sum, while certain expenditures are more likely to raise red flags, they will not give rise to prosecution if they are (1) reasonable, (2) bona fide, and (3) directly related to (4) the promotion, demonstration, or explanation of products or services or the execution or performance of a contract.[158]

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What Are Facilitating or Expediting Payments?

The FCPA's bribery prohibition contains a narrow exception for "facilitating or expediting payments" made in furtherance of routine governmental action.[159] The facilitating payments exception applies only when a payment is made to further "routine governmental action" that involves non-discretionary acts.[160] Examples of "routine governmental action" include processing visas, providing police protection or mail service, and supplying utilities like phone service, power, and water. Routine government action does *not* include a decision to award new business or to continue business with a particular party.[161] Nor does it include acts that are within an official's discretion or that would constitute misuse of an official's office.[162] Thus, paying an official a small amount to have the power turned on at a factory might be a facilitating payment; paying an inspector to ignore the fact that the company does not have a valid permit to operate the factory would not be a facilitating payment.

Examples of "Routine Governmental Action"

An action which is ordinarily and commonly performed by a foreign official in—

- obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- processing governmental papers, such as visas and work orders;
- providing police protection, mail pickup and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- actions of a similar nature.

Whether a payment falls within the exception is not dependent on the size of the payment, though size can be telling, as a large payment is more suggestive of corrupt intent to influence a non-routine governmental action. But, like the FCPA's anti-bribery provisions more generally, the facilitating payments exception focuses on the *purpose* of the payment rather than its value. For instance, an Oklahoma-based corporation violated the FCPA when its subsidiary paid Argentine customs officials approximately $166,000 to secure customs clearance for equipment and materials that lacked required certifications or could not be imported under local law and to pay a lower-than-applicable duty rate. The company's Venezuelan subsidiary had also paid Venezuelan customs officials approximately $7,000 to permit the importation and exportation of equipment and materials not in compliance with local regulations and to avoid a full inspection of the imported goods.[163] In another case, three subsidiaries of a global supplier of oil drilling products and services were criminally charged with authorizing an agent to make at least 378 corrupt payments (totaling approximately $2.1 million) to Nigerian Customs Service officials for preferential treatment during the customs process, including the reduction or elimination of customs duties.[164]

Labeling a bribe as a "facilitating payment" in a company's books and records does not make it one. A Swiss offshore drilling company, for example, recorded payments to its customs agent in the subsidiary's "facilitating payment" account, even though company personnel believed the payments were, in fact, bribes. The company was charged with violating both the FCPA's anti-bribery and accounting provisions.[165]

Although true facilitating payments are not illegal under the FCPA, they may still violate local law in the countries where the company is operating, and the OECD's Working Group on Bribery recommends that all countries encourage companies to prohibit or discourage facilitating payments, which the United States has done regularly.[166] In addition, other countries' foreign bribery laws, such as the United Kingdom's, may not contain an exception for facilitating payments.[167] Individuals and companies should therefore be aware that although true facilitating payments

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are permissible under the FCPA, they may still subject a company or individual to sanctions. As with any expenditure, facilitating payments may still violate the FCPA if they are not properly recorded in an issuer's books and records.[168]

Hypothetical: Facilitating Payments

Company A is a large multi-national mining company with operations in Foreign Country, where it recently identified a significant new ore deposit. It has ready buyers for the new ore but has limited capacity to get it to market. In order to increase the size and speed of its ore export, Company A will need to build a new road from its facility to the port that can accommodate larger trucks. Company A retains an agent in Foreign Country to assist it in obtaining the required permits, including an environmental permit, to build the road. The agent informs Company A's vice president for international operations that he plans to make a one-time small cash payment to a clerk in the relevant government office to ensure that the clerk files and stamps the permit applications expeditiously, as the agent has experienced delays of three months when he has not made this "grease" payment. The clerk has no discretion about whether to file and stamp the permit applications once the requisite filing fee has been paid. The vice president authorizes the payment.

A few months later, the agent tells the vice president that he has run into a problem obtaining a necessary environmental permit. It turns out that the planned road construction would adversely impact an environmentally sensitive and protected local wetland. While the problem could be overcome by rerouting the road, such rerouting would cost Company A $1 million more and would slow down construction by six months. It would also increase the transit time for the ore and reduce the number of monthly shipments. The agent tells the vice president that he is good friends with the director of Foreign Country's Department of Natural Resources and that it would only take a modest cash payment to the director and the "problem would go away." The vice president authorizes the payment, and the agent makes it. After receiving the payment, the director issues the permit, and Company A constructs its new road through the wetlands.

Was the payment to the clerk a violation of the FCPA?

No. Under these circumstances, the payment to the clerk would qualify as a facilitating payment, since it is a one-time, small payment to obtain a routine, non-discretionary governmental service that Company A is entitled to receive (i.e., the stamping and filing of the permit application). However, while the payment may qualify as an exception to the FCPA's anti-bribery provisions, it may violate other laws, both in Foreign Country and elsewhere. In addition, if the payment is not accurately recorded, it could violate the FCPA's books and records provision.

Was the payment to the director a violation of the FCPA?

Yes. The payment to the director of the Department of Natural Resources was in clear violation of the FCPA, since it was designed to corruptly influence a foreign official into improperly approving a permit. The issuance of the environmental permit was a discretionary act, and indeed, Company A should not have received it. Company A, its vice president, and the local agent may all be prosecuted for authorizing and paying the bribe.

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Does the FCPA Apply to Cases of Extortion or Duress?

Situations involving extortion or duress will not give rise to FCPA liability because a payment made in response to true extortionate demands under imminent threat of physical harm cannot be said to have been made with corrupt intent or for the purpose of obtaining or retaining business.[169] In enacting the FCPA, Congress recognized that real-world situations might arise in which a business is compelled to pay an official in order to avoid threats to health and safety. As Congress explained, "a payment to an official to keep an oil rig from being dynamited should not be held to be made with the requisite corrupt purpose."[170]

Mere *economic* coercion, however, does not amount to extortion. As Congress noted when it enacted the FCPA: "The defense that the payment was demanded on the part of a government official as a price for gaining entry into a market or to obtain a contract would not suffice since at some point the U.S. company would make a conscious decision whether or not to pay a bribe."[171] The fact that the payment was "first proposed by the recipient ... does not alter the corrupt purpose on the part of the person paying the bribe."[172]

This distinction between extortion and economic coercion was recognized by the court in *United States v. Kozeny*. There, the court concluded that although an individual who makes a payment under duress (i.e., upon threat of physical harm) will not be criminally liable under the FCPA,[173] a bribe payor who claims payment was demanded as a price for gaining market entry or obtaining a contract "cannot argue that he lacked the intent to bribe the official because he made the 'conscious decision' to pay the official."[174] While the bribe payor in this situation "could have turned his back and walked away," in the oil rig example, "he could not."[175]

Businesses operating in high-risk countries may face real threats of violence or harm to their employees, and payments made in response to imminent threats to health or safety do not violate the FCPA.[176] If such a situation arises, and to ensure the safety of its employees, companies should immediately contact the appropriate U.S. embassy for assistance.

Principles of Corporate Liability for Anti-Bribery Violations

General principles of corporate liability apply to the FCPA. Thus, a company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company.[177] Similarly, just as with any other statute, DOJ and SEC look to principles of parent-subsidiary and successor liability in evaluating corporate liability.

Parent-Subsidiary Liability

There are two ways in which a parent company may be liable for bribes paid by its subsidiary. First, a parent may have participated sufficiently in the activity to be directly liable for the conduct—as, for example, when it directed its subsidiary's misconduct or otherwise directly participated in the bribe scheme.

Second, a parent may be liable for its subsidiary's conduct under traditional agency principles. The fundamental characteristic of agency is control.[178] Accordingly, DOJ and SEC evaluate the parent's control—including the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction—when evaluating whether a subsidiary is an agent of the parent. Although the formal relationship between the parent and subsidiary is important in this analysis, so are the practical realities of how the parent and subsidiary actually interact.

If an agency relationship exists, a subsidiary's actions and knowledge are imputed to its parent.[179] Moreover, under traditional principles of *respondeat superior*, a company is liable for the acts of its agents, including its employees, undertaken within the scope of their employment and intended, at least in part, to benefit the company.[180] Thus, if an agency relationship exists between a parent and a subsidiary, the parent is liable for bribery committed by the subsidiary's employees. For example, SEC brought an administrative action against a parent for bribes paid by the president of its indirect, wholly owned subsidiary. In that matter, the subsidiary's president reported directly to the CEO of the parent issuer, and the issuer routinely identified

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the president as a member of its senior management in its annual filing with SEC and in annual reports. Additionally, the parent's legal department approved the retention of the third-party agent through whom the bribes were arranged despite a lack of documented due diligence and an agency agreement that violated corporate policy; also, an official of the parent approved one of the payments to the third-party agent.[181] Under these circumstances, the parent company had sufficient knowledge and control of its subsidiary's actions to be liable under the FCPA.

Successor Liability

Companies acquire a host of liabilities when they merge with or acquire another company, including those arising out of contracts, torts, regulations, and statutes. As a general legal matter, when a company merges with or acquires another company, the successor company assumes the predecessor company's liabilities.[182] Successor liability is an integral component of corporate law and, among other things, prevents companies from avoiding liability by reorganizing.[183] Successor liability applies to all kinds of civil and criminal liabilities,[184] and FCPA violations are no exception. Whether successor liability applies to a particular corporate transaction depends on the facts and the applicable state, federal, and foreign law. Successor liability does not, however, create liability where none existed before. For example, if an issuer were to acquire a foreign company that was not previously subject to the FCPA's jurisdiction, the mere acquisition of that foreign company would not retroactively create FCPA liability for the acquiring issuer.

DOJ and SEC encourage companies to conduct pre-acquisition due diligence and improve compliance programs and internal controls after acquisition for a variety of reasons. First, due diligence helps an acquiring company to accurately value the target company. Contracts obtained through bribes may be legally unenforceable, business obtained illegally may be lost when bribe payments are stopped, there may be liability for prior illegal conduct, and the prior corrupt acts may harm the acquiring company's reputation and future business prospects. Identifying these issues before an acquisition allows companies to better evaluate any potential post-acquisition liability and thus properly assess the target's value.[185] Second, due diligence reduces the risk that the acquired company will continue to pay bribes. Proper pre-acquisition due diligence can identify business and regional risks and can also lay the foundation for a swift and successful post-acquisition integration into the acquiring company's corporate control and compliance environment. Third, the consequences of potential violations uncovered through due diligence can be handled by the parties in an orderly and efficient manner through negotiation of the costs and responsibilities for the investigation and remediation. Finally, comprehensive due diligence demonstrates a genuine commitment to uncovering and preventing FCPA violations.

In a significant number of instances, DOJ and SEC have declined to take action against companies that voluntarily disclosed and remediated conduct and cooperated with DOJ and SEC in the merger and acquisition context.[186] And DOJ and SEC have only taken action against successor companies in limited circumstances, generally in cases involving egregious and sustained violations or where the successor company directly participated in the violations or failed to stop the misconduct from continuing after the acquisition. In one case, a U.S.-based issuer was charged with books and records and internal controls violations for continuing a kickback scheme originated by its predecessor.[187] Another recent case involved a merger between two tobacco leaf merchants, where prior to the merger each company committed FCPA violations through its foreign subsidiaries, involving multiple countries over the course of many years. At each company, the bribes were directed by the parent company's senior management. The two issuers then merged to form a new public company. Under these circumstances—the merger of two public companies that had each engaged in

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Practical Tips to Reduce FCPA Risk in Mergers and Acquisitions

Companies pursuing mergers or acquisitions can take certain steps to identify and potentially reduce FCPA risks:

- **M&A Opinion Procedure Release Requests:** One option is to seek an opinion from DOJ in anticipation of a potential acquisition, such as occurred with Opinion Release 08-02. That case involved special circumstances, namely, severely limited pre-acquisition due diligence available to the potential acquiring company, and, because it was an opinion release (i.e., providing certain assurances by DOJ concerning prospective conduct), it necessarily imposed demanding standards and prescriptive timeframes in return for specific assurances from DOJ, which SEC, as a matter of discretion, also honors. Thus, obtaining an opinion from DOJ can be a good way to address specific due diligence challenges, but, because of the nature of such an opinion, it will likely contain more stringent requirements than may be necessary in all circumstances.
- **M&A Risk-Based FCPA Due Diligence and Disclosure:** As a practical matter, most acquisitions will typically not require the type of prospective assurances contained in an opinion from DOJ. DOJ and SEC encourage companies engaging in mergers and acquisitions to: (1) conduct thorough risk-based FCPA and anti-corruption due diligence on potential new business acquisitions; (2) ensure that the acquiring company's code of conduct and compliance policies and procedures regarding the FCPA and other anti-corruption laws apply as quickly as is practicable to newly acquired businesses or merged entities; (3) train the directors, officers, and employees of newly acquired businesses or merged entities, and when appropriate, train agents and business partners, on the FCPA and other relevant anti-corruption laws and the company's code of conduct and compliance policies and procedures; (4) conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable; and (5) disclose any corrupt payments discovered as part of its due diligence of newly acquired entities or merged entities. DOJ and SEC will give meaningful credit to companies who undertake these actions, and, in appropriate circumstances, DOJ and SEC may consequently decline to bring enforcement actions.

bribery—both the new entity and the foreign subsidiaries were liable under the FCPA. The new parent entered into a non-prosecution agreement with DOJ and settled a civil action with SEC, while the company's subsidiaries, which also merged, pleaded guilty.[188]

More often, DOJ and SEC have pursued enforcement actions against the predecessor company (rather than the acquiring company), particularly when the acquiring company uncovered and timely remedied the violations or when the government's investigation of the predecessor company preceded the acquisition. In one such case, an Ohio-based health care company's due diligence of an acquisition target uncovered FCPA violations by the target's subsidiary, and, before the merger was completed, the subsidiary's violations were disclosed to DOJ and SEC. The subsidiary pleaded guilty and paid a $2 million criminal fine,[189] the acquisition target settled with SEC and paid a $500,000 civil penalty,[190] and no successor liability was sought against the acquiring entity. In another case, a Pennsylvania-based issuer that supplied heating and air conditioning products and services was subject to an ongoing investigation by DOJ and SEC at the time that it was acquired; DOJ and SEC resolved enforcement actions only against the predecessor company, which had by that time become a wholly owned subsidiary of the successor company.[191]

DOJ and SEC have also brought actions only against a predecessor company where its FCPA violations are discovered after acquisition. For example, when a Florida-based U.S. company discovered in post-acquisition due diligence that the telecommunications company (a domestic concern) it had acquired had engaged in foreign bribery, the successor company disclosed the FCPA violations to DOJ. It then conducted an internal investigation, cooperated fully with DOJ, and took appropriate remedial action—including terminating senior management at the acquired

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company. No enforcement action was taken against the successor, but the predecessor company pleaded guilty to one count of violating the FCPA and agreed to pay a $2 million fine.[192] Later, four executives from the predecessor company were convicted of FCPA violations, three of whom received terms of imprisonment.[193]

On occasion, when an enforcement action has been taken against a predecessor company, the successor seeks assurances that it will not be subject to a future enforcement action. In one such case, a Dutch predecessor resolved FCPA charges with DOJ through a deferred prosecution agreement.[194] While both the predecessor and successor signed the agreement, which included a commitment to ongoing cooperation and an improved compliance program, only the predecessor company was charged; in signing the agreement, the successor company gained the certainty of conditional release from criminal liability, even though it was not being pursued for FCPA violations.[195] In another case, after a Connecticut-based company uncovered FCPA violations by a California company it sought to acquire, both companies voluntarily disclosed the conduct to DOJ and SEC.[196] The predecessor company resolved its criminal liability through a non-prosecution agreement with DOJ that included an $800,000 monetary penalty and also settled with SEC, paying a total of $1.1 million in disgorgement, pre-judgment interest, and civil penalties. The successor company proceeded with the acquisition and separately entered into a non-prosecution agreement with DOJ in which it agreed, among other things, to ensure full performance of the predecessor company's non-prosecution agreement. This agreement provided certainty to the successor concerning its FCPA liability.[197]

Importantly, a successor company's voluntary disclosure, appropriate due diligence, and implementation of an effective compliance program may also decrease the likelihood of an enforcement action regarding an acquired company's post-acquisition conduct when pre-acquisition due diligence is not possible.[198]

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Hypothetical: Successor Liability Where Acquired Company Was Not Previously Subject to the FCPA

Company A is a Delaware corporation with its principal offices in the United States and whose shares are listed on a national U.S. exchange. Company A is considering acquiring Foreign Company, which is not an issuer or a domestic concern. Foreign Company takes no actions within the United States that would make it subject to territorial jurisdiction. Company A's proposed acquisition would make Foreign Company a subsidiary of Company A.

Scenario 1:

Prior to acquiring Foreign Company, Company A engages in extensive due diligence of Foreign Company, including: (1) having its legal, accounting, and compliance departments review Foreign Company's sales and financial data, its customer contracts, and its third-party and distributor agreements; (2) performing a risk-based analysis of Foreign Company's customer base; (3) performing an audit of selected transactions engaged in by Foreign Company; and (4) engaging in discussions with Foreign Company's general counsel, vice president of sales, and head of internal audit regarding all corruption risks, compliance efforts, and any other corruption-related issues that have surfaced at Foreign Company over the past ten years. This due diligence aims to determine whether Foreign Company has appropriate anti-corruption and compliance policies in place, whether Foreign Company's employees have been adequately trained regarding those policies, how Foreign Company ensures that those policies are followed, and what remedial actions are taken if the policies are violated.

During the course of its due diligence, Company A learns that Foreign Company has made several potentially improper payments in the form of an inflated commission to a third-party agent in connection with a government contract with Foreign Country. Immediately after the acquisition, Company A discloses the conduct to DOJ and SEC, suspends and terminates those employees and the third-party agent responsible for the payments, and makes certain that the illegal payments have stopped. It also quickly integrates Foreign Company into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Foreign Company's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, could DOJ or SEC prosecute Company A?

No. Although DOJ and SEC have jurisdiction over Company A because it is an issuer, neither could pursue Company A for conduct that occurred prior to its acquisition of Foreign Company. As Foreign Company was neither an issuer nor a domestic concern and was not subject to U.S. territorial jurisdiction, DOJ and SEC have no jurisdiction over its pre-acquisition misconduct. The acquisition of a company does not create jurisdiction where none existed before.

Importantly, Company A's extensive pre-acquisition due diligence allowed it to identify and halt the corruption. As there was no continuing misconduct post-acquisition, the FCPA was not violated.

Scenario 2:

Company A performs only minimal and pro forma pre-acquisition due diligence. It does not conduct a risk-based analysis, and its review of Foreign Company's data, contracts, and third-party and distributor agreements is cursory. Company A acquires Foreign Company and makes it a wholly owned subsidiary. Although Company A circulates its compliance policies to all new personnel after the acquisition, it does not translate the compliance policies into the local language or train its new personnel or third-party agents on anti-corruption issues.

A few months after the acquisition, an employee in Company A's international sales office (Sales Employee) learns from a legacy Foreign Company employee that for years the government contract that generated most of Foreign Company's revenues depended on inflated commissions to a third-party agent "to make the right person happy at Foreign Government Agency." Sales Employee is told that unless the payments continue the business will likely be lost, which would mean that Company A's new acquisition would quickly become a financial failure. The payments continue for two

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years after the acquisition. After another employee of Company A reports the long-running bribe scheme to a director at Foreign Government Agency, Company A stops the payments and DOJ and SEC investigate.

Based on these facts, would DOJ or SEC charge Company A?

Yes. DOJ and SEC have prosecuted companies like Company A in similar circumstances. Any charges would not, however, be premised upon successor liability, but rather on Company A's post-acquisition bribe payments, which themselves created criminal and civil liability for Company A.

Scenario 3:

Under local law, Company A's ability to conduct pre-acquisition due diligence on Foreign Company is limited. In the due diligence it does conduct, Company A determines that Foreign Company is doing business in high-risk countries and in high-risk industries but finds no red flags specific to Foreign Company's operations. Post-acquisition, Company A conducts extensive due diligence and determines that Foreign Company had paid bribes to officials with Foreign Government Agency. Company A takes prompt action to remediate the problem, including following the measures set forth in Opinion Procedure Release No. 08-02. Among other actions, it voluntarily discloses the misconduct to DOJ and SEC, ensures all bribes are immediately stopped, takes remedial action against all parties involved in the corruption, and quickly incorporates Foreign Company into a robust compliance program and Company A's other internal controls.

Based on these facts, would DOJ or SEC prosecute Company A?

DOJ and SEC have declined to prosecute companies like Company A in similar circumstances. Companies can follow the measures set forth in Opinion Procedure Release No. 08-02, or seek their own opinions, where adequate pre-acquisition due diligence is not possible.

Hypothetical: Successor Liability Where Acquired Company Was Already Subject to the FCPA

Both Company A and Company B are Delaware corporations with their principal offices in the United States. Both companies' shares are listed on a national U.S. exchange.

Scenario 1:

Company A is considering acquiring several of Company B's business lines. Prior to the acquisition, Company A engages in extensive due diligence, including: (1) having its legal, accounting, and compliance departments review Company B's sales and financial data, its customer contracts, and its third-party and distributor agreements; (2) performing a risk-based analysis of Company B's customer base; (3) performing an audit of selected transactions engaged in by Company B; and (4) engaging in discussions with Company B's general counsel, vice president of sales, and head of internal audit regarding all corruption risks, compliance efforts, and any other major corruption-related issues that have surfaced at Company B over the past ten years. This due diligence aims to determine whether Company B has appropriate anti-corruption and compliance policies in place, whether Company B's employees have been adequately trained regarding those policies, how Company B ensures that those policies are followed, and what remedial actions are taken if the policies are violated.

During the course of its due diligence, Company A learns that Company B has made several potentially improper payments in connection with a government contract with Foreign Country. As a condition of the acquisition, Company A requires Company B to disclose the misconduct to the government. Company A makes certain that the illegal payments

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have stopped and quickly integrates Company B's business lines into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Company B's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, would DOJ or SEC prosecute?

DOJ and SEC have declined to prosecute companies like Company A in similar circumstances. DOJ and SEC encourage companies like Company A to conduct extensive FCPA due diligence. By uncovering the corruption, Company A put itself in a favorable position, and, because the corrupt payments have stopped, Company A has no continuing liability. Whether DOJ and SEC might charge Company B depends on facts and circumstances beyond the scope of this hypothetical. DOJ would consider its *Principles of Federal Prosecution of Business Organizations* and SEC would consider the factors contained in the *Seaboard Report*, both of which are discussed in Chapter 5. In general, the more egregious and long-standing the corruption, the more likely it is that DOJ and SEC would prosecute Company B. In certain limited circumstances, DOJ and SEC have in the past declined to bring charges against acquired companies, recognizing that acquiring companies may bear much of the reputational damage and costs associated with such charges.

Scenario 2:

Company A plans to acquire Company B. Although, as in Scenario 1, Company A conducts extensive due diligence, it does not uncover the bribery until after the acquisition. Company A then makes certain that the illegal payments stop and voluntarily discloses the misconduct to DOJ and SEC. It quickly integrates Company B into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Company B's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, would DOJ or SEC prosecute?

Absent unusual circumstances not contemplated by this hypothetical, DOJ and SEC are unlikely to prosecute Company A for the pre-acquisition misconduct of Company B, provided that Company B still exists in a form that would allow it to be prosecuted separately (e.g., Company B is a subsidiary of Company A). DOJ and SEC understand that no due diligence is perfect and that society benefits when companies with strong compliance programs acquire and improve companies with weak ones. At the same time, however, neither the liability for corruption—nor the harms caused by it—are eliminated when one company acquires another. Whether DOJ and SEC will pursue a case against Company B (or, in unusual circumstances, Company A) will depend on consideration of all the factors in the *Principles of Federal Prosecution of Business Organizations* and the *Seaboard Report*, respectively.

Scenario 3:

Company A merges with Company B, which is in the same line of business and interacts with the same Foreign Government customers, and forms Company C. Due diligence before the merger reveals that both Company A and Company B have been engaging in similar bribery. In both cases, the bribery was extensive and known by high-level management within the companies.

Based on these facts, would DOJ or SEC prosecute?

Yes. DOJ and SEC have prosecuted companies like Company C on the basis of successor liability. Company C is a combination of two companies that both violated the FCPA, and their merger does not eliminate their liability. In addition, since Company C is an ongoing concern, DOJ and SEC may impose a monitorship to ensure that the bribery has ceased and a compliance program is developed to prevent future misconduct.

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Additional Principles of Criminal Liability for Anti-Bribery Violations: Aiding and Abetting and Conspiracy

Under federal law, individuals or companies that aid or abet a crime, including an FCPA violation, are as guilty as if they had directly committed the offense themselves. The aiding and abetting statute provides that whoever "commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission," or "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States," is punishable as a principal.[199] Aiding and abetting is not an independent crime, and the government must prove that an underlying FCPA violation was committed.[200]

Individuals and companies, including foreign nationals and companies, may also be liable for conspiring to violate the FCPA—i.e., for *agreeing* to commit an FCPA violation—even if they are not, or could not be, independently charged with a substantive FCPA violation. For instance, a foreign, non-issuer company could be convicted of conspiring with a domestic concern to violate the FCPA. Under certain circumstances, it could also be held liable for the domestic concern's substantive FCPA violations under *Pinkerton v. United States*, which imposes liability on a defendant for reasonably foreseeable crimes committed by a co-conspirator in furtherance of a conspiracy that the defendant joined.[201]

A foreign company or individual may be held liable for aiding and abetting an FCPA violation or for conspiring to violate the FCPA, even if the foreign company or individual did not take any act in furtherance of the corrupt payment while in the territory of the United States. In conspiracy cases, the United States generally has jurisdiction over all the conspirators where at least one conspirator is an issuer, domestic concern, or commits a reasonably foreseeable overt act within the United States.[202] For example, if a foreign company or individual conspires to violate the FCPA with someone who commits an overt act within the United States, the United States can prosecute the foreign company or individual for the conspiracy. The same principle applies to aiding and abetting violations. For instance, even though they took no action in the United States, Japanese and European companies were charged with conspiring with and aiding and abetting a domestic concern's FCPA violations.[203]

Additional Principles of Civil Liability for Anti-Bribery Violations: Aiding and Abetting and Causing

Both companies and individuals can be held civilly liable for aiding and abetting FCPA anti-bribery violations if they knowingly or recklessly provide substantial assistance to a violator.[204] Similarly, in the administrative proceeding context, companies and individuals may be held liable for causing FCPA violations.[205] This liability extends to the subsidiaries and agents of U.S. issuers.

In one case, the U.S. subsidiary of a Swiss freight forwarding company was held civilly liable for paying bribes on behalf of its customers in several countries.[206] Although the U.S. subsidiary was not an issuer for purposes of the FCPA, it was an "agent" of several U.S. issuers. By paying bribes on behalf of its issuers' customers, the subsidiary both directly violated and aided and abetted the issuers' FCPA violations.

What Is the Applicable Statute of Limitations?

Statute of Limitations in Criminal Cases

The FCPA's anti-bribery and accounting provisions do not specify a statute of limitations for criminal actions. Accordingly, the general five-year limitations period set forth in 18 U.S.C. § 3282 applies to substantive criminal violations of the Act.[207]

In cases involving FCPA conspiracies, the government may be able to reach conduct occurring before the five-year limitations period applicable to conspiracies

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under 18 U.S.C. § 371. For conspiracy offenses, the government generally need prove only that one act in furtherance of the conspiracy occurred during the limitations period, thus enabling the government to prosecute bribes paid or accounting violations occurring more than five years prior to the filing of formal charges.[208]

There are at least two ways in which the applicable limitations period is commonly extended. First, companies or individuals cooperating with DOJ may enter into a tolling agreement that voluntarily extends the limitations period. Second, under 18 U.S.C. § 3292, the government may seek a court order suspending the statute of limitations posed in a criminal case for up to three years in order to obtain evidence from foreign countries. Generally, the suspension period begins when the official request is made by the U.S. government to the foreign authority and ends on the date on which the foreign authority takes final action on the request.[209]

Statute of Limitations in Civil Actions

In civil cases brought by SEC, the statute of limitations is set by 28 U.S.C. § 2462, which provides for a five-year limitation on any "suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." The five-year period begins to run "when the claim first accrued." The five-year limitations period applies to SEC actions seeking civil penalties, but it does not prevent SEC from seeking equitable remedies, such as an injunction or the disgorgement of ill-gotten gains, for conduct pre-dating the five-year period. In cases against individuals who are not residents of the United States, the statute is tolled for any period when the defendants are not "found within the United States in order that proper service may be made thereon."[210] Furthermore, companies or individuals cooperating with SEC may enter into tolling agreements that voluntarily extend the limitations period.

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THE FCPA: ACCOUNTING PROVISIONS

In addition to the anti-bribery provisions, the FCPA contains accounting provisions applicable to public companies. The FCPA's accounting provisions operate in tandem with the anti-bribery provisions[211] and prohibit off-the-books accounting. Company management and investors rely on a company's financial statements and internal accounting controls to ensure transparency in the financial health of the business, the risks undertaken, and the transactions between the company and its customers and business partners. The accounting provisions are designed to "strengthen the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of our system of corporate disclosure."[212]

The accounting provisions consist of two primary components. First, under the "books and records" provision, issuers must make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer's transactions and dispositions of an issuer's assets.[213] Second, under the "internal controls" provision, issuers must devise and maintain a system of internal accounting controls sufficient to assure management's control, authority, and responsibility over the firm's assets.[214] These components, and other aspects of the accounting provisions, are discussed in greater detail below.

Although the accounting provisions were originally enacted as part of the FCPA, they do not apply only to bribery-related violations. Rather, the accounting provisions ensure that all public companies account for all of their assets and liabilities accurately and in reasonable detail, and they form the backbone for most accounting fraud and issuer disclosure cases brought by DOJ and SEC.[215]

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In the past, "corporate bribery has been concealed by the falsification of corporate books and records" and the accounting provisions "remove[] this avenue of coverup."

Senate Report No. 95-114, at 3 (1977)

What Is Covered by the Accounting Provisions?

Books and Records Provision

Bribes, both foreign and domestic, are often mischaracterized in companies' books and records. Section 13(b)(2)(A) of the Exchange Act (15 U.S.C. § 78m(b)(2)(A)), commonly called the "books and records" provision, requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."[216] The "in reasonable detail" qualification was adopted by Congress "in light of the concern that such a standard, if unqualified, might connote a degree of exactitude and precision which is unrealistic."[217] The addition of this phrase was intended to make clear "that the issuer's records should reflect transactions in conformity with accepted methods of recording economic events and effectively prevent off-the-books slush funds and payments of bribes."[218]

The term "reasonable detail" is defined in the statute as the level of detail that would "satisfy prudent officials in the conduct of their own affairs."[219] Thus, as Congress noted when it adopted this definition, "[t]he concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance."[220]

Although the standard is one of reasonable detail, it is never appropriate to mischaracterize transactions in a company's books and records.[221] Bribes are often concealed under the guise of legitimate payments, such as commissions or consulting fees.

In instances where all the elements of a violation of the anti-bribery provisions are not met—where, for example, there was no use of interstate commerce—companies nonetheless may be liable if the improper payments are inaccurately recorded. Consistent with the FCPA's approach to prohibiting payments of any value that are made with a corrupt purpose, there is no materiality threshold under the books and records provision. In combination with the internal controls provision, the requirement that issuers maintain books and records that accurately and fairly reflect the corporation's transactions "assure[s], among other things, that the assets of the issuer are used for proper corporate purpose[s]."[222] As with the anti-bribery provisions, DOJ's and SEC's enforcement of the books and records provision has typically involved misreporting of either large bribe payments or widespread inaccurate recording of smaller payments made as part of a systemic pattern of bribery.

Bribes Have Been Mischaracterized As:

- Commissions or Royalties
- Consulting Fees
- Sales and Marketing Expenses
- Scientific Incentives or Studies
- Travel and Entertainment Expenses
- Rebates or Discounts
- After Sales Service Fees
- Miscellaneous Expenses
- Petty Cash Withdrawals
- Free Goods
- Intercompany Accounts
- Supplier / Vendor Payments
- Write-offs
- "Customs Intervention" Payments

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Internal Controls Provision

The payment of bribes often occurs in companies that have weak internal control environments. Internal controls over financial reporting are the processes used by companies to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements. They include various components, such as: a control environment that covers the tone set by the organization regarding integrity and ethics; risk assessments; control activities that cover policies and procedures designed to ensure that management directives are carried out (e.g., approvals, authorizations, reconciliations, and segregation of duties); information and communication; and monitoring. Section 13(b)(2)(B) of the Exchange Act (15 U.S.C. § 78m(b)(2)(B)), commonly called the "internal controls" provision, requires issuers to:

> devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—
> (i) transactions are executed in accordance with management's general or specific authorization;
> (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
> (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
> (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences ....[223]

Like the "reasonable detail" requirement in the books and records provision, the Act defines "reasonable assurances" as "such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs."[224]

The Act does not specify a particular set of controls that companies are required to implement. Rather, the internal controls provision gives companies the flexibility to develop and maintain a system of controls that is appropriate to their particular needs and circumstances.

An effective compliance program is a critical component of an issuer's internal controls. Fundamentally, the design of a company's internal controls must take into account the operational realities and risks attendant to the company's business, such as: the nature of its products or services; how the products or services get to market; the nature of its work force; the degree of regulation; the extent of its government interaction; and the degree to which it has operations in countries with a high risk of corruption. A company's compliance program should be tailored to these differences. Businesses whose operations expose them to a high risk of corruption will necessarily devise and employ different internal controls than businesses that have a lesser exposure to corruption, just as a financial services company would be expected to devise and employ different internal controls than a manufacturer.

A 2008 case against a German manufacturer of industrial and consumer products illustrates a systemic internal controls problem involving bribery that was unprecedented in scale and geographic reach. From 2001 to 2007, the company created elaborate payment schemes—including slush

Companies with ineffective internal controls often face risks of embezzlement and self-dealing by employees, commercial bribery, export control problems, and violations of other U.S. and local laws.

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funds, off-the-books accounts, and systematic payments to business consultants and other intermediaries—to facilitate bribery. Payments were made in ways that obscured their purpose and the ultimate recipients of the money. In some cases, employees obtained large amounts of cash from cash desks and then transported the cash in suitcases across international borders. Authorizations for some payments were placed on sticky notes and later removed to avoid any permanent record. The company made payments totaling approximately $1.36 billion through various mechanisms, including $805.5 million as bribes and $554.5 million for unknown purposes.[225] The company was charged with internal controls and books and records violations, along with anti-bribery violations, and paid over $1.6 billion to resolve the case with authorities in the United States and Germany.[226]

The types of internal control failures identified in the above example exist in many other cases where companies were charged with internal controls violations.[227] A 2010 case against a multi-national automobile manufacturer involved bribery that occurred over a long period of time in multiple countries.[228] In that case, the company used dozens of ledger accounts, known internally as "internal third party accounts," to maintain credit balances for the benefit of government officials.[229] The accounts were funded through several bogus pricing mechanisms, such as "price surcharges," "price inclusions," or excessive commissions.[230] The company also used artificial discounts or rebates on sales contracts to generate the money to pay the bribes.[231] The bribes also were made through phony sales intermediaries and corrupt business partners, as well as through the use of cash desks.[232] Sales executives would obtain cash from the company in amounts as high as hundreds of thousands of dollars, enabling the company to obscure the purpose and recipients of the money paid to government officials.[233] In addition to bribery charges, the company was charged with internal controls and books and records violations.

Good internal controls can prevent not only FCPA violations, but also other illegal or unethical conduct by the company, its subsidiaries, and its employees. DOJ and SEC have repeatedly brought FCPA cases that also involved other types of misconduct, such as financial fraud,[234] commercial bribery,[235] export controls violations,[236] and embezzlement or self-dealing by company employees.[237]

Potential Reporting and Anti-Fraud Violations

Issuers have reporting obligations under Section 13(a) of the Exchange Act, which requires issuers to file an annual report that contains comprehensive information about the issuer. Failure to properly disclose material information about the issuer's business, including material revenue, expenses, profits, assets, or liabilities related to bribery of foreign government officials, may give rise to anti-fraud and reporting violations under Sections 10(b) and 13(a) of the Exchange Act.

For example, a California-based technology company was charged with reporting violations, in addition to violations of the FCPA's anti-bribery and accounting provisions, when its bribery scheme led to material misstatements in its SEC filings.[238] The company was awarded contracts procured through bribery of Chinese officials that generated material revenue and profits. The revenue and profits helped the company offset losses incurred to develop new products expected to become the company's future source of revenue growth. The company improperly recorded the bribe payments as sales commission expenses in its books and records.

Companies engaged in bribery may also be engaged in activity that violates the anti-fraud and reporting provisions. For example, an oil and gas pipeline company and its employees engaged in a long-running scheme to use the company's petty cash accounts in Nigeria to make a variety of corrupt payments to Nigerian tax and court officials using false invoices.[239] The company and its employees also engaged in a fraudulent scheme to minimize the company's tax obligations in Bolivia by using false invoices to claim false offsets to its value-added tax obligations. The scheme resulted in material overstatements of the company's net income in the company's financial statements, which violated the Exchange Act's anti-fraud and reporting provisions. Both schemes also violated the books and records and internal controls provisions.

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Sarbanes-Oxley Act of 2002

In 2002, in response to a series of accounting scandals involving U.S. companies, Congress enacted the Sarbanes-Oxley Act (Sarbanes-Oxley or SOX),[240] which strengthened the accounting requirements for issuers. All issuers must comply with Sarbanes-Oxley's requirements, several of which have FCPA implications.

SOX Section 302 (15 U.S.C. § 7241)—Responsibility of Corporate Officers for the Accuracy and Validity of Corporate Financial Reports

Section 302 of Sarbanes-Oxley requires that a company's "principal officers" (typically the Chief Executive Officer (CEO) and Chief Financial Officer (CFO)) take responsibility for and certify the integrity of their company's financial reports on a quarterly basis. Under Exchange Act Rule 13a-14, which is commonly called the "SOX certification" rule, each periodic report filed by an issuer must include a certification signed by the issuer's principal executive officer and principal financial officer that, among other things, states that: (i) based on the officer's knowledge, the report contains no material misstatements or omissions; (ii) based on the officer's knowledge, the relevant financial statements are accurate in all material respects; (iii) internal controls are properly designed; and (iv) the certifying officers have disclosed to the issuer's audit committee and auditors all significant internal control deficiencies.

SOX Section 404 (15 U.S.C. § 7262)—Reporting on the State of a Company's Internal Controls over Financial Reporting

Sarbanes-Oxley also strengthened a company's required disclosures concerning the state of its internal control over financial reporting. Under Section 404, issuers are required to present in their annual reports management's conclusion regarding the effectiveness of the company's internal controls over financial reporting. This statement must also assess the effectiveness of such internal controls and procedures. In addition, the company's independent auditor must attest to and report on its assessment of the effectiveness of the company's internal controls over financial reporting.

As directed by Section 404, SEC has adopted rules requiring issuers and their independent auditors to report to the public on the effectiveness of the company's internal controls over financial reporting.[241] These internal controls include those related to illegal acts and fraud—including acts of bribery—that could result in a material misstatement of the company's financial statements.[242] In 2007, SEC issued guidance on controls over financial reporting.[243]

SOX Section 802 (18 U.S.C. §§ 1519 and 1520)—Criminal Penalties for Altering Documents

Section 802 of Sarbanes-Oxley prohibits altering, destroying, mutilating, concealing, or falsifying records, documents, or tangible objects with the intent to obstruct, impede, or influence a potential or actual federal investigation. This section also prohibits any accountant from knowingly and willfully violating the requirement that all audit or review papers be maintained for a period of five years.

Who Is Covered by the Accounting Provisions?

Civil Liability for Issuers, Subsidiaries, and Affiliates

The FCPA's accounting provisions apply to every issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file annual or other periodic reports pursuant to Section 15(d) of the Exchange Act.[244] These provisions apply to any issuer whose securities trade on a national securities exchange in the United States, including foreign issuers with exchange-traded American Depository Receipts.[245] They also apply

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to companies whose stock trades in the over-the-counter market in the United States and which file periodic reports with the Commission, such as annual and quarterly reports. Unlike the FCPA's anti-bribery provisions, the accounting provisions do not apply to private companies.[246]

Although the FCPA's accounting requirements are directed at "issuers," an issuer's books and records include those of its consolidated subsidiaries and affiliates. An issuer's responsibility thus extends to ensuring that subsidiaries or affiliates under its control, including foreign subsidiaries and joint venture partners, comply with the accounting provisions. For instance, DOJ and SEC brought enforcement actions against a California company for violating the FCPA's accounting provisions when two Chinese joint ventures in which it was a partner paid more than $400,000 in bribes over a four-year period to obtain business in China.[247] Sales personnel in China made the illicit payments by obtaining cash advances from accounting personnel, who recorded the payments on the books as "business fees" or "travel and entertainment" expenses. Although the payments were made exclusively in China by Chinese employees of the joint venture, the California company failed to have adequate internal controls and failed to act on red flags indicating that its affiliates were engaged in bribery. The California company paid $1.15 million in civil disgorgement and a criminal monetary penalty of $1.7 million.

Companies may not be able to exercise the same level of control over a minority-owned subsidiary or affiliate as they do over a majority or wholly owned entity. Therefore, if a parent company owns less than 50% of a subsidiary or affiliate, the parent is only required to use its best efforts to cause the minority-owned subsidiary or affiliate to devise and maintain a system of internal accounting controls consistent with the issuer's own obligations under the FCPA.[248] In evaluating an issuer's good faith efforts, all the circumstances—including "the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located"—are taken into account.[249]

Civil Liability for Individuals and Other Entities

Companies (including subsidiaries of issuers) and individuals may also face civil liability for aiding and abetting or causing an issuer's violation of the accounting provisions.[250] For example, in April 2010, SEC charged four individuals—a Country Manager, a Senior Vice President of Sales, a Regional Financial Director, and an International Controller of a U.S. issuer—for their roles in schemes to bribe Kyrgyz and Thai government officials to purchase tobacco from their employer. The complaint alleged that, among other things, the individuals aided and abetted the issuer company's violations of the books and records and internal controls provisions by "knowingly provid[ing] substantial assistance to" the parent company.[251] All four executives settled the charges against them, consenting to the entry of final judgments permanently enjoining them from violating the accounting and anti-bribery provisions, with two executives paying civil penalties.[252] As in other areas of federal securities law, corporate officers also can be held liable as control persons.[253]

Similarly, in October 2011, SEC brought an administrative action against a U.S. water valve manufacturer and a former employee of the company's Chinese subsidiary for violations of the FCPA's accounting provisions.[254] The Chinese subsidiary had made improper payments to employees of certain design institutes to create design specifications that favored the company's valve products. The payments were disguised as sales commissions in the subsidiary's books and records, thereby causing the U.S. issuer's books and records to be inaccurate. The general manager of the subsidiary, who approved the payments and knew or should have known that they were improperly recorded, was ordered to cease-and-desist from committing or causing violations of the accounting provisions, among other charges.[255]

Additionally, individuals and entities can be held directly civilly liable for falsifying an issuer's books and records or for circumventing internal controls. Exchange Act Rule 13b2-1 provides: "No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to [the books and records provision] of the Securities Exchange Act."[256] And Section 13(b)(5) of

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the Exchange Act (15 U.S.C. § 78m(b)(5)) provides that "[n]o person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account ...."[257] The Exchange Act defines "person" to include a "natural person, company, government, or political subdivision, agency, or instrumentality of a government."[258]

An issuer's officers and directors may also be held civilly liable for making false statements to a company's auditor. Exchange Act Rule 13b2-2 prohibits officers and directors from making (or causing to be made) materially false or misleading statements, including an omission of material facts, to an accountant. This liability arises in connection with any audit, review, or examination of a company's financial statements or in connection with the filing of any document with SEC.[259]

Finally, the principal executive and principal financial officer, or persons performing similar functions, can be held liable for violating Exchange Act Rule 13a-14 by signing false personal certifications required by SOX. Thus, for example, in January 2011, SEC charged the former CEO of a U.S. issuer for his role in schemes to bribe Iraqi government officials in connection with the United Nations Oil-For-Food Programme and to bribe Iraqi and Indonesian officials to purchase the company's fuel additives. There, the company used false invoices and sham consulting contracts to support large bribes that were passed on to foreign officials through an agent, and the bribes were mischaracterized as legitimate commissions and travel fees in the company's books and records. The officer directed and authorized the bribe payments and their false recording in the books and records. He also signed annual and quarterly SOX certifications in which he falsely represented that the company's financial statements were fairly presented and the company's internal controls sufficiently designed, as well as annual representations to the company's external auditors where he falsely stated that he complied with the company's code of ethics and was unaware of any violations of the code of ethics by anyone else. The officer was charged with aiding and abetting violations of the books and records and internal controls provisions, circumventing internal controls, falsifying books and records, making false statements to accountants, and signing false certifications.[260] He consented to the entry of an injunction and paid disgorgement and a civil penalty.[261] He also later pleaded guilty in the United Kingdom to conspiring to corrupt Iraqi and Indonesian officials.[262]

Criminal Liability for Accounting Violations

Criminal liability can be imposed on companies and individuals for knowingly failing to comply with the FCPA's books and records or internal controls provisions.[263] As with the FCPA's anti-bribery provisions, individuals are only subject to the FCPA's criminal penalties for violations of the accounting provisions if they acted "willfully."[264]

For example, a French company was criminally charged with failure to implement internal controls and failure to keep accurate books and records, among other violations.[265] As part of its deferred prosecution agreement, the company admitted to numerous internal control failures, including failure to implement sufficient anti-bribery compliance policies, maintain a sufficient system for the selection and approval of consultants, and conduct appropriate audits of payments to purported "business consultants."[266] Likewise, a German company pleaded guilty to internal controls and books and records violations where, from 2001 through 2007, it made payments totaling approximately $1.36 billion through various mechanisms, including $805.5 million as bribes and $554.5 million for unknown purposes.[267]

Individuals can be held criminally liable for accounting violations. For example, a former managing director of a U.S. bank's real estate business in China pleaded guilty to conspiring to evade internal accounting controls in order to transfer a multi-million dollar ownership interest in a Shanghai building to himself and a Chinese public official with whom

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he had a personal friendship. The former managing director repeatedly made false representations to his employer about the transaction and the ownership interests involved.[268]

Conspiracy and Aiding and Abetting Liability

As with the FCPA's anti-bribery provisions, companies (including subsidiaries of issuers) and individuals may face criminal liability for conspiring to commit or for aiding and abetting violations of the accounting provisions.

For example, the subsidiary of a Houston-based company pleaded guilty both to conspiring to commit and to aiding and abetting the company's books and records and anti-bribery violations.[269] The subsidiary paid bribes of over $4 million and falsely characterized the payments as "commissions," "fees," or "legal services," consequently causing the company's books and records to be inaccurate. Although the subsidiary was not an issuer and therefore could not be charged directly with an accounting violation, it was criminally liable for its involvement in the parent company's accounting violation.

Similarly, a U.S. subsidiary of a Swiss freight forwarding company that was not an issuer was charged with conspiring to commit and with aiding and abetting the books and records violations of its customers, who were issuers and therefore subject to the FCPA's accounting provisions.[270] The U.S. subsidiary substantially assisted the issuer-customers in violating the FCPA's books and records provision by masking the true nature of the bribe payments in the invoices it submitted to the issuer-customers.[271] The subsidiary thus faced criminal liability for its involvement in the issuer-customers' FCPA violations even though it was not itself subject to the FCPA's accounting provisions.

Auditor Obligations

All public companies in the United States must file annual financial statements that have been prepared in conformity with U.S. Generally Accepted Accounting Principles (U.S. GAAP). These accounting principles are among the most comprehensive in the world. U.S. GAAP requires an accounting of all assets, liabilities, revenue, and expenses as well as extensive disclosures concerning the company's operations and financial condition. A company's financial statements should be complete and fairly represent the company's financial condition.[272] Thus, under U.S. GAAP, any payments to foreign government officials must be properly accounted for in a company's books, records, and financial statements.

U.S. laws, including SEC Rules, require issuers to undergo an annual external audit of their financial statements and to make those audited financial statements available to the public by filing them with SEC. SEC Rules and the rules and standards issued by the Public Company Accounting Oversight Board (PCAOB) under SEC oversight, require external auditors to be independent of the companies that they audit. Independent auditors must comply with the rules and standards set forth by the PCAOB when they perform an audit of a public company. These audit standards govern, for example, the auditor's responsibility concerning material errors, irregularities, or illegal acts by a client and its officers, directors, and employees. Additionally, the auditor has a responsibility to obtain an understanding of an entity's internal controls over financial reporting as part of its audit and must communicate all significant deficiencies and material weaknesses identified during the audit to management and the audit committee.[273]

Under Section 10A of the Exchange Act, independent auditors who discover an illegal act, such as the payment of bribes to domestic or foreign government officials, have certain obligations in connection with their audits of public companies.[274] Generally, Section 10A requires auditors who become aware of illegal acts to report such acts to appropriate levels within the company and, if the company fails to take appropriate action, to notify SEC.

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OTHER RELATED U.S. LAWS

Businesses and individuals should be aware that conduct that violates the FCPA's anti-bribery or accounting provisions may also violate other statutes or regulations. Moreover, payments to foreign government officials and intermediaries may violate these laws even if all of the elements of an FCPA violation are not present.

Travel Act

The Travel Act, 18 U.S.C. § 1952, prohibits travel in interstate or foreign commerce or using the mail or any facility in interstate or foreign commerce, with the intent to distribute the proceeds of any unlawful activity or to promote, manage, establish, or carry on any unlawful activity.[275] "Unlawful activity" includes violations of not only the FCPA, but also state commercial bribery laws. Thus, bribery between private commercial enterprises may, in some circumstances, be covered by the Travel Act. Said differently, if a company pays kickbacks to an employee of a private company who is not a foreign official, such private-to-private bribery could possibly be charged under the Travel Act.

DOJ has previously charged both individual and corporate defendants in FCPA cases with violations of the Travel Act.[276] For instance, an individual investor was convicted of conspiracy to violate the FCPA and the Travel Act in 2009 where the relevant "unlawful activity" under the Travel Act was an FCPA violation involving a bribery scheme in Azerbaijan.[277] Also in 2009, a California company that engaged in both bribery of foreign officials in violation of the FCPA and commercial bribery in violation of California state law pleaded guilty to conspiracy to violate the FCPA and the Travel Act, among other charges.[278]

Money Laundering

Many FCPA cases also involve violations of anti-money laundering statutes.[279] For example, two Florida executives of a Miami-based telecommunications company were convicted of FCPA and money laundering conduct where they conducted financial transactions involving the proceeds of specified unlawful activities—violations of the FCPA, the criminal bribery laws of Haiti, and wire fraud—in order to conceal and disguise these proceeds. Notably, although foreign officials cannot be prosecuted for FCPA

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violations,[280] three former Haitian officials involved in the same scheme were convicted of money laundering.[281]

Mail and Wire Fraud

The mail and wire fraud statutes may also apply. In 2006, for example, a wholly owned foreign subsidiary of a U.S. issuer pleaded guilty to both FCPA and wire fraud counts where the scheme included overbilling the subsidiary's customers—both government and private—and using part of the overcharged money to pay kickbacks to the customers' employees. The wire fraud charges alleged that the subsidiary had funds wired from its parent's Oregon bank account to off-the-books bank accounts in South Korea that were controlled by the subsidiary. The funds, amounting to almost $2 million, were then paid to managers of state-owned and private steel production companies in China and South Korea as illegal commission payments and kickbacks that were disguised as refunds, commissions, and other seemingly legitimate expenses.[282]

Certification and Reporting Violations

Certain other licensing, certification, and reporting requirements imposed by the U.S. government can also be implicated in the foreign bribery context. For example, as a condition of its facilitation of direct loans and loan guarantees to a foreign purchaser of U.S. goods and services, the Export-Import Bank of the United States requires the U.S. supplier to make certifications concerning commissions, fees, or other payments paid in connection with the financial assistance and that it has not and will not violate the FCPA.[283] A false certification may give rise to criminal liability for false statements.[284]

Similarly, manufacturers, exporters, and brokers of certain defense articles and services are subject to registration, licensing, and reporting requirements under the Arms Export Control Act (AECA), 22 U.S.C. § 2751, *et seq.*, and its implementing regulations, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 120, *et seq*. For example, under AECA and ITAR, all manufacturers and exporters of defense articles and services must register with the Directorate of Defense Trade Controls. The sale of defense articles and services valued at $500,000 or more triggers disclosure requirements concerning fees and commissions, including bribes, in an aggregate amount of $100,000 or more.[285] Violations of AECA and ITAR can result in civil and criminal penalties.[286]

Tax Violations

Individuals and companies who violate the FCPA may also violate U.S. tax law, which explicitly prohibits tax deductions for bribes, such as false sales "commissions" deductions intended to conceal corrupt payments.[287] Internal Revenue Service-Criminal Investigation has been involved in a number of FCPA investigations involving tax violations, as well as other financial crimes like money laundering.

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GUIDING PRINCIPLES OF ENFORCEMENT

What Does DOJ Consider When Deciding Whether to Open an Investigation or Bring Charges?

Whether and how DOJ will commence, decline, or otherwise resolve an FCPA matter is guided by the *Principles of Federal Prosecution* in the case of individuals, and the *Principles of Federal Prosecution of Business Organizations* in the case of companies.

DOJ *Principles of Federal Prosecution*

The *Principles of Federal Prosecution*, set forth in Chapter 9-27.000 of the U.S. Attorney's Manual,[288] provide guidance for DOJ prosecutors regarding initiating or declining prosecution, selecting charges, and plea-bargaining. The *Principles of Federal Prosecution* provide that prosecutors should recommend or commence federal prosecution if the putative defendant's conduct constitutes a federal offense and the admissible evidence will probably be sufficient to obtain and sustain a conviction unless (1) no substantial federal interest would be served by prosecution; (2) the person is subject to effective prosecution in another jurisdiction; or (3) an adequate non-criminal alternative to prosecution exists. In assessing the existence of a substantial federal interest, the prosecutor is advised to "weigh all relevant considerations," including the nature and seriousness of the offense; the deterrent effect of prosecution; the person's culpability in connection with the offense; the person's history with respect to criminal activity; the person's willingness to cooperate in the investigation or prosecution of others; and the probable sentence or other consequences if the person is convicted. The *Principles of Federal Prosecution* also set out the considerations to be weighed when deciding whether to enter into a plea agreement with an individual defendant, including the nature and seriousness of the offense and the person's willingness to cooperate, as well as the desirability of prompt and certain disposition of the case and the expense of trial and appeal.[289]

DOJ *Principles of Federal Prosecution of Business Organizations*

The *Principles of Federal Prosecution of Business Organizations*, set forth in Chapter 9-28.000 of the U.S. Attorney's Manual,[290] provide guidance regarding the resolution of cases involving corporate wrongdoing. The *Principles of Federal Prosecution of Business Organizations* recognize that resolution of corporate criminal cases by means other

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than indictment, including non-prosecution and deferred prosecution agreements, may be appropriate in certain circumstances. Nine factors are considered in conducting an investigation, determining whether to charge a corporation, and negotiating plea or other agreements:

- the nature and seriousness of the offense, including the risk of harm to the public;
- the pervasiveness of wrongdoing within the corporation, including the complicity in, or the condoning of, the wrongdoing by corporate management;
- the corporation's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it;
- the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents;
- the existence and effectiveness of the corporation's pre-existing compliance program;
- the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or improve an existing one, replace responsible management, discipline or terminate wrongdoers, pay restitution, and cooperate with the relevant government agencies;
- collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;
- the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
- the adequacy of remedies such as civil or regulatory enforcement actions.

As these factors illustrate, in many investigations it will be appropriate for a prosecutor to consider a corporation's pre-indictment conduct, including voluntary disclosure, cooperation, and remediation, in determining whether to seek an indictment. In assessing a corporation's cooperation, prosecutors are prohibited from requesting attorney-client privileged materials with two exceptions—when a corporation or its employee asserts an advice-of-counsel defense and when the attorney-client communications were in furtherance of a crime or fraud. Otherwise, an organization's cooperation may only be assessed on the basis of whether it disclosed the *relevant facts* underlying an investigation—and not on the basis of whether it has waived its attorney-client privilege or work product protection.[291]

What Does SEC Consider When Deciding Whether to Open an Investigation or Bring Charges?

SEC's *Enforcement Manual*, published by SEC's Enforcement Division and available on SEC's website,[292] sets forth information about how SEC conducts investigations, as well as the guiding principles that SEC staff considers when determining whether to open or close an investigation and whether civil charges are merited. There are various ways that potential FCPA violations come to the attention of SEC staff, including: tips from informants or whistleblowers; information developed in other investigations; self-reports or public disclosures by companies; referrals from other offices or agencies; public sources, such as media reports and trade publications; and proactive investigative techniques, including risk-based initiatives. Investigations can be formal, such as where SEC has issued a formal order of investigation that authorizes its staff to issue investigative subpoenas for testimony and documents, or informal, such as where the staff proceeds with the investigation without the use of investigative subpoenas.

In determining whether to open an investigation and, if so, whether an enforcement action is warranted, SEC staff considers a number of factors, including: the statutes or rules potentially violated; the egregiousness of the potential violation; the potential magnitude of the violation; whether the potentially harmed group is particularly vulnerable or at risk; whether the conduct is ongoing; whether the conduct can be investigated efficiently and within the statute of limitations period; and whether other authorities, including federal or state agencies or regulators, might be better suited to investigate the conduct. SEC staff also may

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consider whether the case involves a possibly widespread industry practice that should be addressed, whether the case involves a recidivist, and whether the matter gives SEC an opportunity to be visible in a community that might not otherwise be familiar with SEC or the protections afforded by the securities laws.

For more information about the Enforcement Division's procedures concerning investigations, enforcement actions, and cooperation with other regulators, see the *Enforcement Manual* at http://www.sec.gov/divisions/enforce.shtml.

Self-Reporting, Cooperation, and Remedial Efforts

While the conduct underlying any FCPA investigation is obviously a fundamental and threshold consideration in deciding what, if any, action to take, both DOJ and SEC place a high premium on self-reporting, along with cooperation and remedial efforts, in determining the appropriate resolution of FCPA matters.

Criminal Cases

Under DOJ's *Principles of Federal Prosecution of Business Organizations*, federal prosecutors consider a company's cooperation in determining how to resolve a corporate criminal case. Specifically, prosecutors consider whether the company made a voluntary and timely disclosure as well as the company's willingness to provide relevant information and evidence and identify relevant actors inside and outside the company, including senior executives. In addition, prosecutors may consider a company's remedial actions, including efforts to improve an existing compliance program or appropriate disciplining of wrongdoers.[293] A company's remedial measures should be meaningful and illustrate its recognition of the seriousness of the misconduct, for example, by taking steps to implement the personnel, operational, and organizational changes necessary to establish an awareness among employees that criminal conduct will not be tolerated.[294]

The *Principles of Federal Prosecution* similarly provide that prosecutors may consider an individual's willingness to cooperate in deciding whether a prosecution should be undertaken and how it should be resolved. Although a willingness to cooperate will not, by itself, generally relieve a person of criminal liability, it may be given "serious consideration" in evaluating whether to enter into a plea agreement with a defendant, depending on the nature and value of the cooperation offered.[295]

The U.S. Sentencing Guidelines similarly take into account an individual defendant's cooperation and voluntary disclosure. Under § 5K1.1, a defendant's cooperation, if sufficiently substantial, may justify the government filing a motion for a reduced sentence. And under § 5K2.16, a defendant's voluntary disclosure of an offense prior to its discovery—if the offense was unlikely to have been discovered otherwise—may warrant a downward departure in certain circumstances.

Chapter 8 of the Sentencing Guidelines, which governs the sentencing of organizations, takes into account an organization's remediation as part of an "effective compliance and ethics program." One of the seven elements of such a program provides that after the detection of criminal conduct, "the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program."[296] Having an effective compliance and ethics program may lead to a three-point reduction in an organization's culpability score under § 8C2.5, which affects the fine calculation under the Guidelines. Similarly, an organization's self-reporting, cooperation, and acceptance of responsibility may lead to fine reductions under § 8C2.5(g) by decreasing the culpability score. Conversely, an organization will not qualify for the compliance program reduction when it unreasonably delayed reporting the offense.[297] Similar to § 5K1.1

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for individuals, organizations can qualify for departures pursuant to § 8C4.1 of the Guidelines for cooperating in the prosecution of others.

Civil Cases

SEC's Framework for Evaluating Cooperation by Companies

SEC's framework for evaluating cooperation by companies is set forth in its 2001 *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions,* which is commonly known as the *Seaboard Report*.[298] The report, which explained the Commission's decision not to take enforcement action against a public company for certain accounting violations caused by its subsidiary, details the many factors SEC considers in determining whether, and to what extent, it grants leniency to companies for cooperating in its investigations and for related good corporate citizenship. Specifically, the report identifies four broad measures of a company's cooperation:

- self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top;
- self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins, and consequences of the misconduct, and promptly, completely, and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations;
- remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and
- cooperation with law enforcement authorities, including providing SEC staff with all information relevant to the underlying violations and the company's remedial efforts.

Since every enforcement matter is different, this analytical framework sets forth general principles but does not limit SEC's broad discretion to evaluate every case individually on its own unique facts and circumstances. Similar to SEC's treatment of cooperating individuals, credit for cooperation by companies may range from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions.

SEC's Framework for Evaluating Cooperation by Individuals

In 2010, SEC announced a new cooperation program for individuals.[299] SEC staff has a wide range of tools to facilitate and reward cooperation by individuals, from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions. Although the evaluation of cooperation depends on the specific circumstances, SEC generally evaluates four factors to determine whether, to what extent, and in what manner to credit cooperation by individuals:

- the assistance provided by the cooperating individual in SEC's investigation or related enforcement actions, including, among other things: the value and timeliness of the cooperation, including whether the individual was the first to report the misconduct to SEC or to offer his or her cooperation; whether the investigation was initiated based upon the information or other cooperation by the individual; the quality of the cooperation, including whether the individual was truthful and the cooperation was complete; the time and resources conserved as a result of the individual's cooperation; and the nature of the cooperation, such as the type of assistance provided;
- the importance of the matter in which the individual provided cooperation;
- the societal interest in ensuring that the cooperating individual is held accountable for his or her misconduct, including the severity of the individual's misconduct, the culpability of the individual, and the efforts undertaken by the individual to remediate the harm; and

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- the appropriateness of a cooperation credit in light of the profile of the cooperating individual.

Corporate Compliance Program

In a global marketplace, an effective compliance program is a critical component of a company's internal controls and is essential to detecting and preventing FCPA violations.[300] Effective compliance programs are tailored to the company's specific business and to the risks associated with that business. They are dynamic and evolve as the business and the markets change.

An effective compliance program promotes "an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[301] Such a program protects a company's reputation, ensures investor value and confidence, reduces uncertainty in business transactions, and secures a company's assets.[302] A well-constructed, thoughtfully implemented, and consistently enforced compliance and ethics program helps prevent, detect, remediate, and report misconduct, including FCPA violations.

In addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, DOJ and SEC also consider the adequacy of a company's compliance program when deciding what, if any, action to take. The program may influence whether or not charges should be resolved through a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA), as well as the appropriate length of any DPA or NPA, or the term of corporate probation. It will often affect the penalty amount and the need for a monitor or self-reporting.[303] As discussed above, SEC's *Seaboard Report* focuses, among other things, on a company's self-policing prior to the discovery of the misconduct, including whether it had established effective compliance procedures.[304] Likewise, three of the nine factors set forth in DOJ's *Principles of Federal Prosecution of Business Organizations* relate, either directly or indirectly, to a compliance program's design and implementation, including the pervasiveness of wrongdoing within the company, the existence and effectiveness of the company's pre-existing compliance program, and the company's remedial actions.[305] DOJ also considers the U.S. Sentencing Guidelines' elements of an effective compliance program, as set forth in § 8B2.1 of the Guidelines.

These considerations reflect the recognition that a company's failure to prevent every single violation does not necessarily mean that a particular company's compliance program was not generally effective. DOJ and SEC understand that "no compliance program can ever prevent all criminal activity by a corporation's employees,"[306] and they do not hold companies to a standard of perfection. An assessment of a company's compliance program, including its design and good faith implementation and enforcement, is an important part of the government's assessment of whether a violation occurred, and if so, what action should be taken. In appropriate circumstances, DOJ and SEC may decline to pursue charges against a company based on the company's effective compliance program, or may otherwise seek to reward a company for its program, even when that program did not prevent the particular underlying FCPA violation that gave rise to the investigation.[307]

DOJ and SEC have no formulaic requirements regarding compliance programs. Rather, they employ a common-sense and pragmatic approach to evaluating compliance programs, making inquiries related to three basic questions:

- Is the company's compliance program well designed?
- Is it being applied in good faith?
- Does it work?[308]

This guide contains information regarding some of the basic elements DOJ and SEC consider when evaluating compliance programs. Although the focus is on compliance with the FCPA, given the existence of anti-corruption laws in many other countries, businesses should consider designing programs focused on anti-corruption compliance more broadly.[309]

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Hallmarks of Effective Compliance Programs

Individual companies may have different compliance needs depending on their size and the particular risks associated with their businesses, among other factors. When it comes to compliance, there is no one-size-fits-all program. Thus, the discussion below is meant to provide insight into the aspects of compliance programs that DOJ and SEC assess, recognizing that companies may consider a variety of factors when making their own determination of what is appropriate for their specific business needs.[310] Indeed, small- and medium-size enterprises likely will have different compliance programs from large multi-national corporations, a fact DOJ and SEC take into account when evaluating companies' compliance programs.

Compliance programs that employ a "check-the-box" approach may be inefficient and, more importantly, ineffective. Because each compliance program should be tailored to an organization's specific needs, risks, and challenges, the information provided below should not be considered a substitute for a company's own assessment of the corporate compliance program most appropriate for that particular business organization. In the end, if designed carefully, implemented earnestly, and enforced fairly, a company's compliance program—no matter how large or small the organization—will allow the company generally to prevent violations, detect those that do occur, and remediate them promptly and appropriately.

Commitment from Senior Management and a Clearly Articulated Policy Against Corruption

Within a business organization, compliance begins with the board of directors and senior executives setting the proper tone for the rest of the company. Managers and employees take their cues from these corporate leaders. Thus, DOJ and SEC consider the commitment of corporate leaders to a "culture of compliance"[311] and look to see if this high-level commitment is also reinforced and implemented by middle managers and employees at all levels of a business. A well-designed compliance program that is not enforced in good faith, such as when corporate management explicitly or implicitly encourages employees to engage in misconduct to achieve business objectives, will be ineffective. DOJ and SEC have often encountered companies with compliance programs that are strong on paper but that nevertheless have significant FCPA violations because management has failed to effectively implement the program even in the face of obvious signs of corruption. This may be the result of aggressive sales staff preventing compliance personnel from doing their jobs effectively and of senior management, more concerned with securing a valuable business opportunity than enforcing a culture of compliance, siding with the sales team. The higher the financial stakes of the transaction, the greater the temptation for management to choose profit over compliance.

A strong ethical culture directly supports a strong compliance program. By adhering to ethical standards, senior managers will inspire middle managers to reinforce those standards. Compliant middle managers, in turn, will encourage employees to strive to attain those standards throughout the organizational structure.[312]

In short, compliance with the FCPA and ethical rules must start at the top. DOJ and SEC thus evaluate whether senior management has clearly articulated company standards, communicated them in unambiguous terms, adhered to them scrupulously, and disseminated them throughout the organization.

Code of Conduct and Compliance Policies and Procedures

A company's code of conduct is often the foundation upon which an effective compliance program is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company's behalf. Indeed, it would be difficult to effectively implement a compliance program if it was not available in the local language so that employees in foreign subsidiaries can access and understand it. When assessing a compliance program, DOJ and SEC will review whether the company

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has taken steps to make certain that the code of conduct remains current and effective and whether a company has periodically reviewed and updated its code.

Whether a company has policies and procedures that outline responsibilities for compliance within the company, detail proper internal controls, auditing practices, and documentation policies, and set forth disciplinary procedures will also be considered by DOJ and SEC. These types of policies and procedures will depend on the size and nature of the business and the risks associated with the business. Effective policies and procedures require an in-depth understanding of the company's business model, including its products and services, third-party agents, customers, government interactions, and industry and geographic risks. Among the risks that a company may need to address include the nature and extent of transactions with foreign governments, including payments to foreign officials; use of third parties; gifts, travel, and entertainment expenses; charitable and political donations; and facilitating and expediting payments. For example, some companies with global operations have created web-based approval processes to review and approve routine gifts, travel, and entertainment involving foreign officials and private customers with clear monetary limits and annual limitations. Many of these systems have built-in flexibility so that senior management, or in-house legal counsel, can be apprised of and, in appropriate circumstances, approve unique requests. These types of systems can be a good way to conserve corporate resources while, if properly implemented, preventing and detecting potential FCPA violations.

Regardless of the specific policies and procedures implemented, these standards should apply to personnel at all levels of the company.

Oversight, Autonomy, and Resources

In appraising a compliance program, DOJ and SEC also consider whether a company has assigned responsibility for the oversight and implementation of a company's compliance program to one or more specific senior executives within an organization.[313] Those individuals must have appropriate authority within the organization, adequate autonomy from management, and sufficient resources to ensure that the company's compliance program is implemented effectively.[314] Adequate autonomy generally includes direct access to an organization's governing authority, such as the board of directors and committees of the board of directors (e.g., the audit committee).[315] Depending on the size and structure of an organization, it may be appropriate for day-to-day operational responsibility to be delegated to other specific individuals within a company.[316] DOJ and SEC recognize that the reporting structure will depend on the size and complexity of an organization. Moreover, the amount of resources devoted to compliance will depend on the company's size, complexity, industry, geographical reach, and risks associated with the business. In assessing whether a company has reasonable internal controls, DOJ and SEC typically consider whether the company devoted adequate staffing and resources to the compliance program given the size, structure, and risk profile of the business.

Risk Assessment

Assessment of risk is fundamental to developing a strong compliance program, and is another factor DOJ and SEC evaluate when assessing a company's compliance program.[317] One-size-fits-all compliance programs are generally ill-conceived and ineffective because resources inevitably are spread too thin, with too much focus on low-risk markets and transactions to the detriment of high-risk areas. Devoting a disproportionate amount of time policing modest entertainment and gift-giving instead of focusing on large government bids, questionable payments to third-party consultants, or excessive discounts to resellers and distributors may indicate that a company's compliance program is ineffective. A $50 million contract with a government agency in a high-risk country warrants greater

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scrutiny than modest and routine gifts and entertainment. Similarly, performing identical due diligence on all third-party agents, irrespective of risk factors, is often counter-productive, diverting attention and resources away from those third parties that pose the most significant risks. DOJ and SEC will give meaningful credit to a company that implements in good faith a comprehensive, risk-based compliance program, even if that program does not prevent an infraction in a low risk area because greater attention and resources had been devoted to a higher risk area. Conversely, a company that fails to prevent an FCPA violation on an economically significant, high-risk transaction because it failed to perform a level of due diligence commensurate with the size and risk of the transaction is likely to receive reduced credit based on the quality and effectiveness of its compliance program.

As a company's risk for FCPA violations increases, that business should consider increasing its compliance procedures, including due diligence and periodic internal audits. The degree of appropriate due diligence is fact-specific and should vary based on industry, country, size, and nature of the transaction, and the method and amount of third-party compensation. Factors to consider, for instance, include risks presented by: the country and industry sector, the business opportunity, potential business partners, level of involvement with governments, amount of government regulation and oversight, and exposure to customs and immigration in conducting business affairs. When assessing a company's compliance program, DOJ and SEC take into account whether and to what degree a company analyzes and addresses the particular risks it faces.

Training and Continuing Advice

Compliance policies cannot work unless effectively communicated throughout a company. Accordingly, DOJ and SEC will evaluate whether a company has taken steps to ensure that relevant policies and procedures have been communicated throughout the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners.[318] For example, many larger companies have implemented a mix of web-based and in-person training conducted at varying intervals. Such training typically covers company policies and procedures, instruction on applicable laws, practical advice to address real-life scenarios, and case studies. Regardless of how a company chooses to conduct its training, however, the information should be presented in a manner appropriate for the targeted audience, including providing training and training materials in the local language. For example, companies may want to consider providing different types of training to their sales personnel and accounting personnel with hypotheticals or sample situations that are similar to the situations they might encounter. In addition to the existence and scope of a company's training program, a company should develop appropriate measures, depending on the size and sophistication of the particular company, to provide guidance and advice on complying with the company's ethics and compliance program, including when such advice is needed urgently. Such measures will help ensure that the compliance program is understood and followed appropriately at all levels of the company.

Incentives and Disciplinary Measures

In addition to evaluating the design and implementation of a compliance program throughout an organization, enforcement of that program is fundamental to its effectiveness.[319] A compliance program should apply from the board room to the supply room—no one should be beyond its reach. DOJ and SEC will thus consider whether, when enforcing a compliance program, a company has appropriate and clear disciplinary procedures, whether those procedures are applied reliably and promptly, and whether they are commensurate with the violation. Many companies have found that publicizing disciplinary actions internally, where appropriate under local law, can have an important deterrent effect, demonstrating that unethical and unlawful actions have swift and sure consequences.

DOJ and SEC recognize that positive incentives can also drive compliant behavior. These incentives can take many

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forms such as personnel evaluations and promotions, rewards for improving and developing a company's compliance program, and rewards for ethics and compliance leadership.[320] Some organizations, for example, have made adherence to compliance a significant metric for management's bonuses so that compliance becomes an integral part of management's everyday concern. Beyond financial incentives, some companies have highlighted compliance within their organizations by recognizing compliance professionals and internal audit staff. Others have made working in the company's compliance organization a way to advance an employee's career. SEC, for instance, has encouraged companies to embrace methods to incentivize ethical and lawful behavior:

> [M]ake integrity, ethics and compliance part of the promotion, compensation and evaluation processes as well. For at the end of the day, the most effective way to communicate that "doing the right thing" is a priority, is to reward it. Conversely, if employees are led to believe that, when it comes to compensation and career advancement, all that counts is short-term profitability, and that cutting ethical corners is an acceptable way of getting there, they'll perform to that measure. To cite an example from a different walk of life: a college football coach can be told that the graduation rates of his players are what matters, but he'll know differently if the sole focus of his contract extension talks or the decision to fire him is his win-loss record. [321]

No matter what the disciplinary scheme or potential incentives a company decides to adopt, DOJ and SEC will consider whether they are fairly and consistently applied across the organization. No executive should be above compliance, no employee below compliance, and no person within an organization deemed too valuable to be disciplined, if warranted. Rewarding good behavior and sanctioning bad behavior reinforces a culture of compliance and ethics throughout an organization.

Third-Party Due Diligence and Payments

DOJ's and SEC's FCPA enforcement actions demonstrate that third parties, including agents, consultants, and distributors, are commonly used to conceal the payment of bribes to foreign officials in international business transactions. Risk-based due diligence is particularly important with third parties and will also be considered by DOJ and SEC in assessing the effectiveness of a company's compliance program.

Although the degree of appropriate due diligence may vary based on industry, country, size and nature of the transaction, and historical relationship with the third-party, some guiding principles always apply.

First, as part of risk-based due diligence, companies should understand the qualifications and associations of its third-party partners, including its business reputation, and relationship, if any, with foreign officials. The degree of scrutiny should increase as red flags surface.

Second, companies should have an understanding of the business rationale for including the third party in the transaction. Among other things, the company should understand the role of and need for the third party and ensure that the contract terms specifically describe the services to be performed. Additional considerations include payment terms and how those payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, companies may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided.

Third, companies should undertake some form of ongoing monitoring of third-party relationships.[322] Where appropriate, this may include updating due diligence periodically, exercising audit rights, providing periodic training, and requesting annual compliance certifications by the third party.

In addition to considering a company's due diligence on third parties, DOJ and SEC also assess whether the company has informed third parties of the company's

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Compliance Program Case Study

Recent DOJ and SEC actions relating to a financial institution's real estate transactions with a government agency in China illustrate the benefits of implementing and enforcing a comprehensive risk-based compliance program. The case involved a joint venture real estate investment in the Luwan District of Shanghai, China, between a U.S.-based financial institution and a state-owned entity that functioned as the District's real estate arm. The government entity conducted the transactions through two special purpose vehicles ("SPVs"), with the second SPV purchasing a 12% stake in a real estate project.

The financial institution, through a robust compliance program, frequently trained its employees, imposed a comprehensive payment-approval process designed to prevent bribery, and staffed a compliance department with a direct reporting line to the board of directors. As appropriate given the industry, market, and size and structure of the transactions, the financial institution (1) provided extensive FCPA training to the senior executive responsible for the transactions and (2) conducted extensive due diligence on the transactions, the local government entity, and the SPVs. Due diligence on the entity included reviewing Chinese government records; speaking with sources familiar with the Shanghai real estate market; checking the government entity's payment records and credit references; conducting an on-site visit and placing a pretextual telephone call to the entity's offices; searching media sources; and conducting background checks on the entity's principals. The financial institution vetted the SPVs by obtaining a letter with designated bank account information from a Chinese official associated with the government entity (the "Chinese Official"); using an international law firm to request and review 50 documents from the SPVs' Canadian attorney; interviewing the attorney; and interviewing the SPVs' management.

Notwithstanding the financial institution's robust compliance program and good faith enforcement of it, the company failed to learn that the Chinese Official personally owned nearly 50% of the second SPV (and therefore a nearly 6% stake in the joint venture) and that the SPV was used as a vehicle for corrupt payments. This failure was due, in large part, to misrepresentations by the Chinese Official, the financial institution's executive in charge of the project, and the SPV's attorney that the SPV was 100% owned and controlled by the government entity. DOJ and SEC declined to take enforcement action against the financial institution, and its executive pleaded guilty to conspiracy to violate the FCPA's internal control provisions and also settled with SEC.

compliance program and commitment to ethical and lawful business practices and, where appropriate, whether it has sought assurances from third parties, through certifications and otherwise, of reciprocal commitments. These can be meaningful ways to mitigate third-party risk.

Confidential Reporting and Internal Investigation

An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation.[323] Companies may employ, for example, anonymous hotlines or ombudsmen. Moreover, once an allegation is made, companies should have in place an efficient, reliable, and properly funded process for investigating the allegation and documenting the company's response, including any disciplinary or remediation measures taken. Companies will want to consider taking "lessons learned" from any reported violations and the outcome of any resulting investigation to update their internal controls and compliance program and focus future training on such issues, as appropriate.

Continuous Improvement: Periodic Testing and Review

Finally, a good compliance program should constantly evolve. A company's business changes over time, as do the environments in which it operates, the nature of its customers, the laws that govern its actions, and the standards of its

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industry. In addition, compliance programs that do not just exist on paper but are followed in practice will inevitably uncover compliance weaknesses and require enhancements. Consequently, DOJ and SEC evaluate whether companies regularly review and improve their compliance programs and not allow them to become stale.

According to one survey, 64% of general counsel whose companies are subject to the FCPA say there is room for improvement in their FCPA training and compliance programs.[324] An organization should take the time to review and test its controls, and it should think critically about its potential weaknesses and risk areas. For example, some companies have undertaken employee surveys to measure their compliance culture and strength of internal controls, identify best practices, and detect new risk areas. Other companies periodically test their internal controls with targeted audits to make certain that controls on paper are working in practice. DOJ and SEC will give meaningful credit to thoughtful efforts to create a sustainable compliance program if a problem is later discovered. Similarly, undertaking proactive evaluations before a problem strikes can lower the applicable penalty range under the U.S. Sentencing Guidelines.[325] Although the nature and the frequency of proactive evaluations may vary depending on the size and complexity of an organization, the idea behind such efforts is the same: continuous improvement and sustainability.[326]

Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

In the context of the FCPA, mergers and acquisitions present both risks and opportunities. A company that does not perform adequate FCPA due diligence prior to a merger or acquisition may face both legal and business risks.[327] Perhaps most commonly, inadequate due diligence can allow a course of bribery to continue—with all the attendant harms to a business's profitability and reputation, as well as potential civil and criminal liability.

In contrast, companies that conduct effective FCPA due diligence on their acquisition targets are able to evaluate more accurately each target's value and negotiate for the costs of the bribery to be borne by the target. In addition, such actions demonstrate to DOJ and SEC a company's commitment to compliance and are taken into account when evaluating any potential enforcement action. For example, DOJ and SEC declined to take enforcement action against an acquiring issuer when the issuer, among other things, uncovered the corruption at the company being acquired as part of due diligence, ensured that the corruption was voluntarily disclosed to the government, cooperated with the investigation, and incorporated the acquired company into its compliance program and internal controls. On the other hand, SEC took action against the acquired company, and DOJ took action against a subsidiary of the acquired company.[328] When pre-acquisition due diligence is not possible, DOJ has described procedures, contained in Opinion Procedure Release No. 08-02, pursuant to which companies can nevertheless be rewarded if they choose to conduct thorough post-acquisition FCPA due diligence.[329]

FCPA due diligence, however, is normally only a portion of the compliance process for mergers and acquisitions. DOJ and SEC evaluate whether the acquiring company promptly incorporated the acquired company into all of its internal controls, including its compliance program. Companies should consider training new employees, reevaluating third parties under company standards, and, where appropriate, conducting audits on new business units.

For example, as a result of due diligence conducted by a California-based issuer before acquiring the majority interest in a joint venture, the issuer learned of corrupt payments to obtain business. However, the issuer only implemented its internal controls "halfway" so as not to "choke the sales engine and cause a distraction for the sales guys." As a result, the improper payments continued, and the issuer was held liable for violating the FCPA's internal controls and books and records provisions.[330]

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Other Guidance on Compliance and International Best Practices

In addition to this guide, the U.S. Departments of Commerce and State have both issued publications that contain guidance regarding compliance programs. The Department of Commerce's International Trade Administration has published *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*,[331] and the Department of State has published *Fighting Global Corruption: Business Risk Management*.[332]

There is also an emerging international consensus on compliance best practices, and a number of inter-governmental and non-governmental organizations have issued guidance regarding best practices for compliance.[333] Most notably, the OECD's 2009 Anti-Bribery Recommendation and its Annex II, *Good Practice Guidance on Internal Controls, Ethics, and Compliance*,[334] published in February 2010, were drafted based on consultations with the private sector and civil society and set forth specific good practices for ensuring effective compliance programs and measures for preventing and detecting foreign bribery. In addition, businesses may wish to refer to the following resources:

- Asia-Pacific Economic Cooperation—*Anti-Corruption Code of Conduct for Business*;[335]
- International Chamber of Commerce—*ICC Rules on Combating Corruption*;[336]
- Transparency International—*Business Principles for Countering Bribery*;[337]
- United Nations Global Compact—*The Ten Principles*;[338]
- World Bank—*Integrity Compliance Guidelines*;[339] and
- World Economic Forum—*Partnering Against Corruption–Principles for Countering Bribery*.[340]

Hypothetical: Third-Party Vetting

Part 1: Consultants

Company A, a U.S. issuer headquartered in Delaware, wants to start doing business in a country that poses high risks of corruption. Company A learns about a potential $50 million contract with the country's Ministry of Immigration. This is a very attractive opportunity to Company A, both for its profitability and to open the door to future projects with the government. At the suggestion of the company's senior vice president of international sales (Sales Executive), Company A hires a local businessman who assures them that he has strong ties to political and government leaders in the country and can help them win the contract. Company A enters into a consulting contract with the local businessman (Consultant). The agreement requires Consultant to use his best efforts to help the company win the business and provides for Consultant to receive a significant monthly retainer as well as a success fee of 3% of the value of any contract the company wins.

What steps should Company A consider taking before hiring Consultant?

There are several factors here that might lead Company A to perform heightened FCPA-related due diligence prior to retaining Consultant: (1) the market (high-risk country); (2) the size and significance of the deal to the company; (3) the company's first time use of this particular consultant; (4) the consultant's strong ties to political and government leaders; (5) the success fee structure of the contract; and (6) the vaguely-defined services to be provided. In order to minimize the likelihood of incurring FCPA liability, Company A should carefully vet Consultant and his role in the transaction, including close scrutiny of the relationship between Consultant and any Ministry of Immigration officials or other government officials. Although there is nothing inherently illegal about contracting with a third party that has close connections to politicians and government officials to perform legitimate services on a transaction, this type of relationship can be susceptible to corruption. Among other things, Company A may consider conducting due diligence on Consultant, including background

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and reference checks; ensuring that the contract spells out exactly what services and deliverables (such as written status reports or other documentation) Consultant is providing; training Consultant on the FCPA and other anti-corruption laws; requiring Consultant to represent that he will abide by the FCPA and other anti-corruption laws; including audit rights in the contract (and exercising those rights); and ensuring that payments requested by Consultant have the proper supporting documentation before they are approved for payment.

Part 2: Distributors and Local Partners

Assume the following alternative facts:

Instead of hiring Consultant, Company A retains an often-used local distributor (Distributor) to sell Company A's products to the Ministry of Immigration. In negotiating the pricing structure, Distributor, which had introduced the project to Company A, claims that the standard discount price to Distributor creates insufficient margin for Distributor to cover warehousing, distribution, installation, marketing, and training costs and requests an additional discount or rebate, or, in the alternative, a contribution to its marketing efforts, either in the form of a lump sum or as a percentage of the total contract. The requested discount/allowance is significantly larger than usual, although there is precedent at Company A for granting this level of discount in unique circumstances. Distributor further advises Company A that the Ministry's procurement officials responsible for awarding the contract have expressed a strong preference for including a particular local company (Local Partner) in the transaction as a subcontractor of Company A to perform installation, training, and other services that would normally have been performed by Distributor or Company A. According to Distributor, the Ministry has a solid working relationship with Local Partner, and it would cause less disruption for Local Partner to perform most of the on-site work at the Ministry. One of the principals (Principal 1) of the Local Partner is an official in another government ministry.

What additional compliance considerations do these alternative facts raise?

As with Consultant in the first scenario above, Company A should carefully vet Distributor and Local Partner and their roles in the transaction in order to minimize the likelihood of incurring FCPA liability. While Company A has an established relationship with Distributor, the fact that Distributor has requested an additional discount warrants further inquiry into the economic justification for the change, particularly where, as here, the proposed transaction structure contemplates paying Local Partner to provide many of the same services that Distributor would otherwise provide. In many cases, it may be appropriate for distributors to receive larger discounts to account for unique circumstances in particular transactions. That said, a common mechanism to create additional margin for bribe payments is through excessive discounts or rebates to distributors. Accordingly, when a company has pre-existing relationships with distributors and other third parties, transaction-specific due diligence—including an analysis of payment terms to confirm that the payment is commensurate with the work being performed—can be critical even in circumstances where due diligence of the distributor or other third party raises no initial red flags.

Company A should carefully scrutinize the relationship among Local Partner, Distributor, and Ministry of Immigration officials. While there is nothing inherently illegal about contracting with a third party that is recommended by the end-user, or even hiring a government official to perform legitimate services on a transaction unrelated to his or her government job, these facts raise additional red flags that warrant significant scrutiny. Among other things, Company A would be well-advised to require Principal 1 to verify that he will have no role in the Ministry of Immigration's decision to award the contract to Company A, notify the Ministry of Immigration and his own ministry of his proposed involvement in the transaction, and certify that he will abide by the FCPA and other anti-corruption laws and that his involvement in the transaction is permitted under local law.

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Assume the following additional facts:

Under its company policy for a government transaction of this size, Company A requires both finance and compliance approval. The finance officer is concerned that the discounts to Distributor are significantly larger than what they have approved for similar work and will cut too deeply into Company A's profit margin. The finance officer is also skeptical about including Local Partner to perform some of the same services that Company A is paying Distributor to perform. Unsatisfied with Sales Executive's explanation, she requests a meeting with Distributor and Principal 1. At the meeting, Distributor and Principal 1 offer vague and inconsistent justifications for the payments and fail to provide any supporting analysis, and Principal 1 seems to have no real expertise in the industry. During a coffee break, Distributor comments to Sales Executive that the finance officer is naïve about "how business is done in my country." Following the meeting, Sales Executive dismisses the finance officer's concerns, assuring her that the proposed transaction structure is reasonable and legitimate. Sales Executive also reminds the finance officer that "the deal is key to their growth in the industry."

The compliance officer focuses his due diligence on vetting Distributor and Local Partner and hires a business investigative firm to conduct a background check. Distributor appears reputable, capable, and financially stable and is willing to take on real risk in the project, financial and otherwise. However, the compliance officer learns that Distributor has established an off-shore bank account for the transaction. The compliance officer further learns that Local Partner's business was organized two years ago and appears financially stable but has no expertise in the industry and has established an off-shore shell company and bank account to conduct this transaction. The background check also reveals that Principal 1 is a former college roommate of a senior official of the Ministry of Immigration. The Sales Executive dismisses the compliance officer's concerns, commenting that what Local Partner does with its payments "isn't our problem." Sales Executive also strongly objects to the compliance officer's request to meet with Principal 1 to discuss the off-shore company and account, assuring him that it was done for legitimate tax purposes and complaining that if Company A continues to "harass" Local Partner and Distributor, they would partner with Company A's chief competitor. The compliance officer and the finance officer discuss their concerns with each other but ultimately sign off on the deal even though their questions had not been answered. Their decision is motivated in large part by their conversation with Sales Executive, who told them that this was the region's most important contract and that the detailed FCPA questionnaires and robust anti-corruption representations in the contracts placed the burden on Distributor and Local Partner to act ethically.

Company A goes forward with the Distributor and Local Partner agreements and wins the contract after six months. The finance officer approves Company A's payments to Local Partner via the offshore account, even though Local Partner's invoices did not contain supporting detail or documentation of any services provided. Company A recorded the payments as legitimate operational expenses on its books and records. Sales Executive received a large year-end bonus due to the award of the contract.

In fact, Local Partner and Distributor used part of the payments and discount margin, respectively, to funnel bribe payments to several Ministry of Immigration officials, including Principal 1's former college roommate, in exchange for awarding the contract to Company A. Thousands of dollars are also wired to the personal offshore bank account of Sales Executive.

How would DOJ and SEC evaluate the potential FCPA liability of Company A and its employees?

This is not the case of a single "rogue employee" circumventing an otherwise robust compliance program. Although Company A's finance and compliance officers had the correct instincts to scrutinize the structure and economics of the transaction and the role of the third parties, their due diligence was incomplete. When the initial inquiry identified significant red flags, they approved the transaction despite knowing that their concerns were unanswered or the answers they received raised additional concerns and red flags. Relying on due diligence questionnaires and anti-corruption representations is insufficient, particularly when the risks are readily apparent. Nor can Company A or its employees shield themselves from liability because it was Distributor and Local Partner—rather than Company A directly—that made the payments.

The facts suggest that Sales Executive had actual knowledge of or was willfully blind to the consultant's payment of the bribes. He also personally profited from the scheme (both from the kickback and from the bonus he received from the company) and intentionally discouraged the finance and compliance officers from learning the full story. Sales Executive is therefore subject to liability under the anti-bribery, books and records, and internal controls provisions of the FCPA, and others may be as well. Company A may also be liable for violations of the anti-bribery, books and records, and internal controls provisions of the FCPA given the number and significance of red flags that established a high probability of bribery and the role of employees and agents acting on the company's behalf.

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FCPA PENALTIES, SANCTIONS, AND REMEDIES

What Are the Potential Consequences for Violations of the FCPA?

The FCPA provides for different criminal and civil penalties for companies and individuals.

Criminal Penalties

For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $2 million.[341] Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to $100,000 and imprisonment for up to five years.[342]

For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $25 million.[343] Individuals are subject to a fine of up to $5 million and imprisonment for up to 20 years.[344]

Under the Alternative Fines Act, 18 U.S.C. § 3571(d), courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant sought to obtain by making the corrupt payment, as long as the facts supporting the increased fines are included in the indictment and either proved to the jury beyond a reasonable doubt or admitted in a guilty plea proceeding.[345] Fines imposed on individuals may not be paid by their employer or principal.[346]

U.S. Sentencing Guidelines

When calculating penalties for violations of the FCPA, DOJ focuses its analysis on the U.S. Sentencing Guidelines (Guidelines)[347] in all of its resolutions, including guilty pleas, DPAs, and NPAs. The Guidelines provide a very detailed and predictable structure for calculating penalties for all federal crimes, including violations of the FCPA. To determine the appropriate penalty, the "offense level" is first calculated by examining both the severity of the crime and facts specific to the crime, with appropriate reductions for cooperation and acceptance of responsibility, and, for business entities, additional factors such as voluntary disclosure, cooperation, pre-existing compliance programs, and remediation.

The Guidelines provide for different penalties for the different provisions of the FCPA. The initial offense level for violations of the anti-bribery provisions is determined under § 2C1.1, while violations of the accounting provisions are assessed under § 2B1.1. For individuals, the initial offense level is modified by factors set forth in Chapters 3, 4, and 5 of the Guidelines[348] to identify a final offense level. This final offense level, combined with other factors, is used

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to determine whether the Guidelines would recommend that incarceration is appropriate, the length of any term of incarceration, and the appropriate amount of any fine. For corporations, the offense level is modified by factors particular to organizations as described in Chapter 8 to determine the applicable organizational penalty.

For example, violations of the anti-bribery provisions are calculated pursuant to § 2C1.1. The offense level is determined by first identifying the base offense level;[349] adding additional levels based on specific offense characteristics, including whether the offense involved more than one bribe, the value of the bribe or the benefit that was conferred, and the level of the public official;[350] adjusting the offense level based on the defendant's role in the offense;[351] and using the total offense level as well as the defendant's criminal history category to determine the advisory guideline range.[352] For violations of the accounting provisions assessed under § 2B1.1, the procedure is generally the same, except that the specific offense characteristics differ. For instance, for violations of the FCPA's accounting provisions, the offense level may be increased if a substantial part of the scheme occurred outside the United States or if the defendant was an officer or director of a publicly traded company at the time of the offense.[353]

For companies, the offense level is calculated pursuant to §§ 2C1.1 or 2B1.1 in the same way as for an individual—by starting with the base offense level and increasing it as warranted by any applicable specific offense characteristics. The organizational guidelines found in Chapter 8, however, provide the structure for determining the final advisory guideline fine range for organizations. The base fine consists of the greater of the amount corresponding to the total offense level, calculated pursuant to the Guidelines, or the pecuniary gain or loss from the offense.[354] This base fine is then multiplied by a culpability score that can either reduce the fine to as little as five percent of the base fine or increase the recommended fine to up to four times the amount of the base fine.[355] As described in § 8C2.5, this culpability score is calculated by taking into account numerous factors such as the size of the organization committing the criminal acts; the involvement in or tolerance of criminal activity by high-level personnel within the organization; and prior misconduct or obstructive behavior. The culpability score is reduced if the organization had an effective preexisting compliance program to prevent violations and if the organization voluntarily disclosed the offense, cooperated in the investigation, and accepted responsibility for the criminal conduct.[356]

Civil Penalties

Although only DOJ has the authority to pursue criminal actions, both DOJ and SEC have civil enforcement authority under the FCPA. DOJ may pursue civil actions for anti-bribery violations by domestic concerns (and their officers, directors, employees, agents, or stockholders) and foreign nationals and companies for violations while in the United States, while SEC may pursue civil actions against issuers and their officers, directors, employees, agents, or stockholders for violations of the anti-bribery and the accounting provisions.[357]

For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to $16,000 per violation.[358] Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to $16,000 per violation,[359] which may not be paid by their employer or principal.[360]

For violations of the accounting provisions, SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $7,500 to $150,000 for an individual and $75,000 to $725,000 for a company.[361] SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings.[362]

Collateral Consequences

In addition to the criminal and civil penalties described above, individuals and companies who violate the FCPA may face significant collateral consequences, including suspension

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or debarment from contracting with the federal government, cross-debarment by multilateral development banks, and the suspension or revocation of certain export privileges.

Debarment

Under federal guidelines governing procurement, an individual or company that violates the FCPA or other criminal statutes may be barred from doing business with the federal government. The Federal Acquisition Regulations (FAR) provide for the potential suspension or debarment of companies that contract with the government upon conviction of or civil judgment for bribery, falsification or destruction of records, the making of false statements, or "[c]ommission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor."[363] These measures are not intended to be punitive and may be imposed only if "in the public's interest for the Government's protection."[364]

Under the FAR, a decision to debar or suspend is discretionary. The decision is not made by DOJ prosecutors or SEC staff, but instead by independent debarment authorities within each agency, such as the Department of Defense or the General Services Administration, which analyze a number of factors to determine whether a company should be suspended, debarred, or otherwise determined to be ineligible for government contracting. Such factors include whether the contractor has effective internal control systems in place, self-reported the misconduct in a timely manner, and has taken remedial measures.[365] If a cause for debarment exists, the contractor has the burden of demonstrating to the satisfaction of the debarring official that it is presently responsible and that debarment is not necessary.[366] Each federal department and agency determines the eligibility of contractors with whom it deals. However, if one department or agency debars or suspends a contractor, the debarment or suspension applies to the entire executive branch of the federal government, unless a department or agency shows compelling reasons not to debar or suspend the contractor.[367]

Although guilty pleas, DPAs, and NPAs do not result in automatic debarment from U.S. government contracting, committing a federal crime and the factual admissions underlying a resolution are factors that the independent debarment authorities may consider. Moreover, indictment alone can lead to suspension of the right to do business with the government.[368] The U.S. Attorney's Manual also provides that when a company engages in fraud against the government, a prosecutor may not negotiate away an agency's right to debar or delist the company as part of the plea bargaining process.[369] In making debarment determinations, contracting agencies, including at the state and local level, may consult with DOJ in advance of awarding a contract. Depending on the circumstances, DOJ may provide information to contracting authorities in the context of the corporate settlement about the facts and circumstances underlying the criminal conduct and remediation measures undertaken by the company, if any. This information sharing is not advocacy, and the ultimate debarment decisions are squarely within the purview of the independent debarment authorities. In some situations, the contracting agency may impose its own oversight requirements in order for a company that has admitted to violations of federal law to be awarded federal contracts, such as the Corporate Integrity Agreements often required by the Department of Health and Human Services.

Cross-Debarment by Multilateral Development Banks

Multilateral Development Banks (MDBs), like the World Bank, also have the ability to debar companies and individuals for corrupt practices.[370] Each MDB has its own process for evaluating alleged corruption in connection with MDB-funded projects. When appropriate, DOJ and SEC work with MDBs to share evidence and refer cases. On April 9, 2010, the African Development Bank Group, the Asian Development Bank, the European Bank for

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Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group entered into an agreement under which entities debarred by one MDB will be sanctioned for the same misconduct by other signatory MDBs.[371] This cross-debarment agreement means that if a company is debarred by one MDB, it is debarred by all.[372]

Loss of Export Privileges

Companies and individuals who violate the FCPA may face consequences under other regulatory regimes, such as the Arms Export Control Act (AECA), 22 U.S.C. § 2751, *et seq.*, and its implementing regulations, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 120, *et seq*. AECA and ITAR together provide for the suspension, revocation, amendment, or denial of an arms export license if an applicant has been indicted or convicted for violating the FCPA.[373] They also set forth certain factors for the Department of State's Directorate of Defense Trade Controls (DDTC)[374] to consider when determining whether to grant, deny, or return without action license applications for certain types of defense materials. One of those factors is whether there is reasonable cause to believe that an applicant for a license has violated (or conspired to violate) the FCPA; if so, the Department of State "may disapprove the application."[375] In addition, it is the policy of the Department of State not to consider applications for licenses involving any persons who have been convicted of violating the AECA or convicted of conspiracy to violate the AECA.[376] In an action related to the criminal resolution of a U.K. military products manufacturer, the DDTC imposed a "policy of denial" for export licenses on three of the company's subsidiaries that were involved in violations of AECA and ITAR.[377]

When Is a Compliance Monitor or Independent Consultant Appropriate?

One of the primary goals of both criminal prosecutions and civil enforcement actions against companies that violate the FCPA is ensuring that such conduct does not occur again. As a consequence, enhanced compliance and reporting requirements may be part of criminal and civil resolutions of FCPA matters. The amount of enhanced compliance and kind of reporting required varies according to the facts and circumstances of individual cases.

In criminal cases, a company's sentence, or a DPA or NPA with a company, may require the appointment of an independent corporate monitor. Whether a monitor is appropriate depends on the specific facts and circumstances of the case. In 2008, DOJ issued internal guidance regarding the selection and use of corporate monitors in DPAs and NPAs with companies. Additional guidance has since been issued.[378] A monitor is an independent third party who assesses and monitors a company's adherence to the compliance requirements of an agreement that was designed to reduce the risk of recurrence of the company's misconduct. Appointment of a monitor is not appropriate in all circumstances, but it may be appropriate, for example, where a company does not already have an effective internal compliance program or needs to establish necessary internal controls. In addition, companies are sometimes allowed to engage in self-monitoring, typically in cases when the company has made a voluntary disclosure, has been fully cooperative, and has demonstrated a genuine commitment to reform.

Factors DOJ and SEC Consider When Determining Whether a Compliance Monitor Is Appropriate Include:

- Seriousness of the offense
- Duration of the misconduct
- Pervasiveness of the misconduct, including whether the conduct cuts across geographic and/or product lines
- Nature and size of the company
- Quality of the company's compliance program at the time of the misconduct
- Subsequent remediation efforts

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In civil cases, a company may similarly be required to retain an independent compliance consultant or monitor to provide an independent, third-party review of the company's internal controls. The consultant recommends improvements, to the extent necessary, which the company must adopt. When both DOJ and SEC require a company to retain a monitor, the two agencies have been able to coordinate their requirements so that the company can retain one monitor to fulfill both sets of requirements.

The most successful monitoring relationships are those in which the company embraces the monitor or consultant. If the company takes the recommendations and suggestions seriously and uses the monitoring period as a time to find and fix any outstanding compliance issues, the company can emerge from the monitorship with a stronger, long-lasting compliance program.

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RESOLUTIONS

What Are the Different Types of Resolutions with DOJ?

Criminal Complaints, Informations, and Indictments

Charges against individuals and companies are brought in three different ways under the Federal Rules of Criminal Procedure: criminal complaints, criminal informations, and indictments.

DOJ may agree to resolve criminal FCPA matters against companies either through a declination or, in appropriate cases, a negotiated resolution resulting in a plea agreement, deferred prosecution agreement, or non-prosecution agreement. For individuals, a negotiated resolution will generally take the form of a plea agreement, which may include language regarding cooperation, or a non-prosecution cooperation agreement. When negotiated resolutions cannot be reached with companies or individuals, the matter may proceed to trial.

Plea Agreements

Plea agreements—whether with companies or individuals—are governed by Rule 11 of the Federal Rules of Criminal Procedure. The defendant generally admits to the facts supporting the charges, admits guilt, and is convicted of the charged crimes when the plea agreement is presented to and accepted by a court. The plea agreement may jointly recommend a sentence or fine, jointly recommend an analysis under the U.S. Sentencing Guidelines, or leave such items open for argument at the time of sentencing.

Deferred Prosecution Agreements

Under a deferred prosecution agreement, or a DPA as it is commonly known, DOJ files a charging document with the court,[379] but it simultaneously requests that the prosecution be deferred, that is, postponed for the purpose of allowing the company to demonstrate its good conduct. DPAs generally require a defendant to agree to pay a monetary penalty, waive the statute of limitations, cooperate with the government, admit the relevant facts, and enter into certain compliance and remediation commitments, potentially including a corporate compliance monitor. DPAs describe the company's conduct, cooperation, and remediation, if any, and provide a calculation of the penalty pursuant to the U.S. Sentencing Guidelines. In addition to being publicly filed, DOJ places all of its DPAs on its website. If the company successfully completes the term of the agreement (typically two or three years), DOJ will then move to dismiss the filed charges. A company's successful completion of a DPA is not treated as a criminal conviction.

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Non-Prosecution Agreements

Under a non-prosecution agreement, or an NPA as it is commonly known, DOJ maintains the right to file charges but refrains from doing so to allow the company to demonstrate its good conduct during the term of the NPA. Unlike a DPA, an NPA is not filed with a court but is instead maintained by the parties. In circumstances where an NPA is with a company for FCPA-related offenses, it is made available to the public through DOJ's website. The requirements of an NPA are similar to those of a DPA, and generally require a waiver of the statute of limitations, ongoing cooperation, admission of the material facts, and compliance and remediation commitments, in addition to payment of a monetary penalty. If the company complies with the agreement throughout its term, DOJ does not file criminal charges. If an individual complies with the terms of his or her NPA, namely, truthful and complete cooperation and continued law-abiding conduct, DOJ will not pursue criminal charges.

Declinations

As discussed above, DOJ's decision to bring or decline to bring an enforcement action under the FCPA is made pursuant to the *Principles of Federal Prosecution*, in the case of individuals, and the *Principles of Federal Prosecution of Business Organizations*, in the case of companies. As described, in the case of individuals, the *Principles of Federal Prosecution* advise prosecutors to weigh all relevant considerations, including:

- federal law enforcement priorities;
- the nature and seriousness of the offense;
- the deterrent effect of prosecution;
- the person's culpability in connection with the offense;
- the person's history of criminal activity;
- the person's willingness to cooperate in the investigation or prosecution of others; and
- the probable sentence or other consequences if the person is convicted.[380]

The *Principles of Federal Prosecution* provide additional commentary about each of these factors. For instance, they explain that prosecutors should take into account federal law enforcement priorities because federal law enforcement and judicial resources are not sufficient to permit prosecution of every alleged offense over which federal jurisdiction exists. The deterrent effect of prosecution should also be kept in mind because some offenses, "although seemingly not of great importance by themselves, if commonly committed would have a substantial cumulative impact on the community."[381]

As discussed above, the *Principles of Federal Prosecution of Business Organizations* require prosecutors to consider nine factors when determining whether to prosecute a corporate entity for an FCPA violation, including the nature and seriousness of the offense; the pervasiveness of wrongdoing within the company; the company's history of similar conduct; the existence and effectiveness of the company's pre-existing compliance program; and the adequacy of remedies, such as civil or regulatory enforcement actions.

Pursuant to these guidelines, DOJ has declined to prosecute both individuals and corporate entities in numerous cases based on the particular facts and circumstances presented in those matters, taking into account the available evidence.[382] To protect the privacy rights and other interests of the uncharged and other potentially interested parties, DOJ has a long-standing policy not to provide, without the party's consent, non-public information on matters it has declined to prosecute. To put DOJ's declinations in context, however, in the past two years alone, DOJ has declined several dozen cases against companies where potential FCPA violations were alleged.

As mentioned above, there are rare occasions in which, in conjunction with the public filing of charges against an individual, it is appropriate to disclose that a company is not also being prosecuted. That was done in a recent case where a former employee was charged but the former corporate employer was not.[383]

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What Are the Different Types of Resolutions with SEC?

Civil Injunctive Actions and Remedies

In a civil injunctive action, SEC seeks a court order compelling the defendant to obey the law in the future. Violating such an order can result in civil or criminal contempt proceedings. Civil contempt sanctions, brought by SEC, are remedial rather than punitive in nature and serve one of two purposes: to compensate the party injured as a result of the violation of the injunction or force compliance with the terms of the injunction.

Where a defendant has profited from a violation of law, SEC can obtain the equitable relief of disgorgement of ill-gotten gains and pre-judgment interest and can also obtain civil money penalties pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act. SEC may also seek ancillary relief (such as an accounting from a defendant). Pursuant to Section 21(d)(5), SEC also may seek, and any federal court may grant, any other equitable relief that may be appropriate or necessary for the benefit of investors, such as enhanced remedial measures or the retention of an independent compliance consultant or monitor.

Civil Administrative Actions and Remedies

SEC has the ability to institute various types of administrative proceedings against a person or an entity that it believes has violated the law. This type of enforcement action is brought by SEC's Enforcement Division and is litigated before an SEC administrative law judge (ALJ). The ALJ's decision is subject to appeal directly to the Securities and Exchange Commission itself, and the Commission's decision is in turn subject to review by a U.S. Court of Appeals.

Administrative proceedings provide for a variety of relief. For regulated persons and entities, such as broker-dealers and investment advisers and persons associated with them, sanctions include censure, limitation on activities, suspension of up to twelve months, and bar from association or revocation of registration. For professionals such as attorneys and accountants, SEC can order in Rule 102(e) proceedings that the professional be censured, suspended, or barred from practicing before SEC.[384] SEC staff can seek an order from an administrative law judge requiring the respondent to cease and desist from any current or future violations of the securities laws. In addition, SEC can obtain disgorgement, pre-judgment interest, and civil money penalties in administrative proceedings under Section 21B of the Exchange Act, and also can obtain other equitable relief, such as enhanced remedial measures or the retention of an independent compliance consultant or monitor.

Deferred Prosecution Agreements

A deferred prosecution agreement is a written agreement between SEC and a potential cooperating individual or company in which SEC agrees to forego an enforcement action against the individual or company if the individual or company agrees to, among other things: (1) cooperate truthfully and fully in SEC's investigation and related enforcement actions; (2) enter into a long-term tolling agreement; (3) comply with express prohibitions and/or undertakings during a period of deferred prosecution; and (4) under certain circumstances, agree either to admit or not to contest underlying facts that SEC could assert to establish a violation of the federal securities laws. If the agreement is violated during the period of deferred prosecution, SEC staff may recommend an enforcement action to the Commission against the individual or company for the original misconduct as well as any additional misconduct. Furthermore, if the Commission authorizes the enforcement action, SEC staff may use any factual admissions made by the cooperating individual or company in support of a motion for summary judgment, while maintaining the ability to bring an enforcement action for any additional misconduct at a later date.

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In May of 2011, SEC entered into its first deferred prosecution agreement against a company for violating the FCPA.[385] In that case, a global manufacturer of steel pipe products violated the FCPA by bribing Uzbekistan government officials during a bidding process to supply pipelines for transporting oil and natural gas. The company made almost $5 million in profits when it was subsequently awarded several contracts by the Uzbekistan government. The company discovered the misconduct during a worldwide review of its operations and brought it to the government's attention. In addition to self-reporting, the company conducted a thorough internal investigation; provided complete, real-time cooperation with SEC and DOJ staff; and undertook extensive remediation, including enhanced anti-corruption procedures and training. Under the terms of the DPA, the company paid $5.4 million in disgorgement and prejudgment interest. The company also paid a $3.5 million monetary penalty to resolve a criminal investigation by DOJ through an NPA.[386]

For further information about deferred prosecution agreements, see SEC's *Enforcement Manual*.[387]

Non-Prosecution Agreements

A non-prosecution agreement is a written agreement between SEC and a potential cooperating individual or company, entered into in limited and appropriate circumstances, that provides that SEC will not pursue an enforcement action against the individual or company if the individual or company agrees to, among other things: (1) cooperate truthfully and fully in SEC's investigation and related enforcement actions; and (2) comply, under certain circumstances, with express undertakings. If the agreement is violated, SEC staff retains its ability to recommend an enforcement action to the Commission against the individual or company.

For further information about non-prosecution agreements, see SEC's *Enforcement Manual*.[388]

Termination Letters and Declinations

As discussed above, SEC's decision to bring or decline to bring an enforcement action under the FCPA is made pursuant to the guiding principles set forth in SEC's *Enforcement Manual*. The same factors that apply to SEC staff's determination of whether to recommend an enforcement action against an individual or entity apply to the decision to close an investigation without recommending enforcement action.[389]

Generally, SEC staff considers, among other things:

- the seriousness of the conduct and potential violations;
- the resources available to SEC staff to pursue the investigation;
- the sufficiency and strength of the evidence;
- the extent of potential investor harm if an action is not commenced; and
- the age of the conduct underlying the potential violations.

SEC has declined to take enforcement action against both individuals and companies based on the facts and circumstances present in those matters, where, for example, the conduct was not egregious, the company fully cooperated, and the company identified and remediated the misconduct quickly. SEC Enforcement Division policy is to notify individuals and entities at the earliest opportunity when the staff has determined not to recommend an enforcement action against them to the Commission. This notification takes the form of a termination letter.

In order to protect the privacy rights and other interests of the uncharged and other potentially interested parties, SEC does not provide non-public information on matters it has declined to prosecute.

What Are Some Examples of Past Declinations by DOJ and SEC?

Neither DOJ nor SEC typically publicizes declinations but, to provide some insight into the process, the following are recent, anonymized examples of matters DOJ and SEC have declined to pursue:

Example 1: Public Company Declination

DOJ and SEC declined to take enforcement action against a public U.S. company. Factors taken into consideration included:

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- The company discovered that its employees had received competitor bid information from a third party with connections to the foreign government.
- The company began an internal investigation, withdrew its contract bid, terminated the employees involved, severed ties to the third-party agent, and voluntarily disclosed the conduct to DOJ's Antitrust Division, which also declined prosecution.
- During the internal investigation, the company uncovered various FCPA red flags, including prior concerns about the third-party agent, all of which the company voluntarily disclosed to DOJ and SEC.
- The company immediately took substantial steps to improve its compliance program.

Example 2: Public Company Declination

DOJ and SEC declined to take enforcement action against a public U.S. company. Factors taken into consideration included:

- With knowledge of employees of the company's subsidiary, a retained construction company paid relatively small bribes, which were wrongly approved by the company's local law firm, to foreign building code inspectors.
- When the company's compliance department learned of the bribes, it immediately ended the conduct, terminated its relationship with the construction company and law firm, and terminated or disciplined the employees involved.
- The company completed a thorough internal investigation and voluntarily disclosed to DOJ and SEC.
- The company reorganized its compliance department, appointed a new compliance officer dedicated to anti-corruption, improved the training and compliance program, and undertook a review of all of the company's international third-party relationships.

Example 3: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held industrial services company for bribes paid by a small foreign subsidiary. Factors taken into consideration included:

- The company self-reported the conduct to DOJ and SEC.
- The total amount of the improper payments was relatively small, and the activity appeared to be an isolated incident by a single employee at the subsidiary.
- The profits potentially obtained from the improper payments were very small.
- The payments were detected by the company's existing internal controls. The company's audit committee conducted a thorough independent internal investigation. The results of the investigation were provided to the government.
- The company cooperated fully with investigations by DOJ and SEC.
- The company implemented significant remedial actions and enhanced its internal control structure.

Example 4: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held oil-and-gas services company for small bribes paid by a foreign subsidiary's customs agent. Factors taken into consideration included:

- The company's internal controls timely detected a potential bribe before a payment was made.
- When company management learned of the potential bribe, management immediately reported the issue to the company's General Counsel and Audit Committee and prevented the payment from occurring.
- Within weeks of learning of the attempted bribe, the company provided in-person FCPA training to employees of the subsidiary and undertook

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an extensive internal investigation to determine whether any of the company's subsidiaries in the same region had engaged in misconduct.

- The company self-reported the misconduct and the results of its internal investigation to DOJ and SEC.
- The company cooperated fully with investigations by DOJ and SEC.
- In addition to the immediate training at the relevant subsidiary, the company provided comprehensive FCPA training to all of its employees and conducted an extensive review of its anti-corruption compliance program.
- The company enhanced its internal controls and record-keeping policies and procedures, including requiring periodic internal audits of customs payments.
- As part of its remediation, the company directed that local lawyers rather than customs agents be used to handle its permits, with instructions that "no matter what, we don't pay bribes"—a policy that resulted in a longer and costlier permit procedure.

Example 5: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held consumer products company in connection with its acquisition of a foreign company. Factors taken into consideration included:

- The company identified the potential improper payments to local government officials as part of its pre-acquisition due diligence.
- The company promptly developed a comprehensive plan to investigate, correct, and remediate any FCPA issues after acquisition.
- The company promptly self-reported the issues prior to acquisition and provided the results of its investigation to the government on a real-time basis.
- The acquiring company's existing internal controls and compliance program were robust.
- After the acquisition closed, the company implemented a comprehensive remedial plan, ensured that all improper payments stopped, provided extensive FCPA training to employees of the new subsidiary, and promptly incorporated the new subsidiary into the company's existing internal controls and compliance environment.

Example 6: Private Company Declination

In 2011, DOJ declined to take prosecutorial action against a privately held U.S. company and its foreign subsidiary. Factors taken into consideration included:

- The company voluntarily disclosed bribes paid to social security officials in a foreign country.
- The total amount of the bribes was small.
- When discovered, the corrupt practices were immediately terminated.
- The conduct was thoroughly investigated, and the results of the investigation were promptly provided to DOJ.
- All individuals involved were either terminated or disciplined. The company also terminated its relationship with its foreign law firm.
- The company instituted improved training and compliance programs commensurate with its size and risk exposure.

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WHISTLEBLOWER PROVISIONS AND PROTECTIONS

Assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal. Through their knowledge of the circumstances and individuals involved, whistleblowers can help SEC and DOJ identify potential violations much earlier than might otherwise have been possible, thus allowing SEC and DOJ to minimize the harm to investors, better preserve the integrity of the U.S. capital markets, and more swiftly hold accountable those responsible for unlawful conduct.

The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 both contain provisions affecting whistleblowers who report FCPA violations. Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor, for which they would be eligible to receive reinstatement, back pay, and other compensation.[390] Sarbanes-Oxley also prohibits retaliation against employee whistleblowers under the obstruction of justice statute.[391]

In 2010, the Dodd-Frank Act added Section 21F to the Exchange Act, addressing whistleblower incentives and protections. Section 21F authorizes SEC to provide monetary awards to eligible individuals who voluntarily come forward with high quality, original information that leads to an SEC enforcement action in which over $1,000,000 in sanctions is ordered.[392] The awards range is between 10% and 30% of the monetary sanctions recovered by the government. The Dodd-Frank Act also prohibits employers from retaliating against whistleblowers and creates a private right of action for employees who are retaliated against.[393]

Furthermore, businesses should be aware that retaliation against a whistleblower may also violate state, local, and foreign laws that provide protection of whistleblowers.

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On August 12, 2011, the final rules for SEC's Whistleblower Program became effective. These rules set forth the requirements for whistleblowers to be eligible for awards consideration, the factors that SEC will use to determine the amount of the award, the categories of individuals who are excluded from award consideration, and the categories of individuals who are subject to limitations in award considerations.[394] The final rules strengthen incentives for employees to report the suspected violations internally through internal compliance programs when appropriate, although it does not require an employee to do so in order to qualify for an award.[395]

Individuals with information about a possible violation of the federal securities laws, including FCPA violations, should submit that information to SEC either online through SEC's Tips, Complaints, and Referrals (TCR) Intake and Resolution System (available at https://denebleo.sec.gov/TCRExternal/disclaimer.xhtml) or by mailing or faxing a completed Form TCR to the Commission's Office of the Whistleblower.

Whistleblowers can submit information anonymously. To be considered under SEC's whistleblower program as eligible for a reward, however, the information must be submitted on an anonymous whistleblower's behalf by an attorney.[396] Whether or not a whistleblower reports anonymously, SEC is committed to protecting the identity of a whistleblower to the fullest extent possible under the statute.[397] SEC's Office of the Whistleblower administers SEC's Whistleblower Program and answers questions from the public regarding the program. Additional information regarding SEC's Whistleblower Program, including answers to frequently asked questions, is available online at http://www.sec.gov/whistleblower.

SEC Office of the Whistleblower

100 F Street NE, Mail Stop 5971
Washington, DC 20549
Facsimile: (703) 813-9322
Online Report Form: http://www.sec.gov/whistleblower

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DOJ OPINION PROCEDURE

DOJ's opinion procedure is a valuable mechanism for companies and individuals to determine whether proposed conduct would be prosecuted by DOJ under the FCPA.[398] Generally speaking, under the opinion procedure process, parties submit information to DOJ, after which DOJ issues an opinion about whether the proposed conduct falls within its enforcement policy. All of DOJ's prior opinions are available online.[399] Parties interested in obtaining such an opinion should follow these steps:[400]

First, those seeking an opinion should evaluate whether their question relates to actual, prospective conduct.[401] The opinion procedure cannot be used to obtain opinions on purely historical conduct or on hypothetical questions. DOJ will not consider a request unless that portion of the transaction for which an opinion is sought involves only prospective conduct, although the transaction as a whole may have components that already have occurred. An executed contract is not a prerequisite and, in most—if not all—instances, an opinion request should be made before the requestor commits to proceed with a transaction.[402] Those seeking requests should be aware that FCPA opinions relate only to the FCPA's anti-bribery provisions.[403]

Second, before making the request, the company or individual should check that they are either an issuer or a domestic concern, as only those categories of parties can receive an opinion.[404] If the transaction involves more than one issuer or domestic concern, consider making a request for an opinion jointly, as opinions only apply to the parties that request them.[405]

Third, those seeking an opinion must put their request in writing. The request must be specific and accompanied by all relevant and material information bearing on the conduct and circumstances for which an opinion is requested. Material information includes background information, complete copies of all operative documents, and detailed statements of all collateral or oral understandings, if any. Those seeking opinions are under an affirmative obligation to make full and true disclosures.[406] Materials disclosed to DOJ will not be made public without the consent of the party submitting them.[407]

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Fourth, the request must be signed. For corporate requestors, the signatory should be an appropriate senior officer with operational responsibility for the conduct that is the subject of the request and who has been designated by the corporation's chief executive officer. In appropriate cases, DOJ also may require the chief executive officer to sign the request. Those signing the request must certify that it contains a true, correct, and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.[408]

Fifth, an original and five copies of the request should be addressed to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Opinion Group.[409] The mailing address is P.O. Box 28188 Central Station, Washington, D.C. 20038. DOJ also asks that you send an electronic courtesy copy to FCPA.Fraud@usdoj.gov.

DOJ will evaluate the request for an FCPA opinion.[410] A party may withdraw a request for an opinion at any time prior to the release of an opinion.[411] If the request is complete and all the relevant information has been submitted, DOJ will respond to the request by issuing an opinion within 30 days.[412] If the request is incomplete, DOJ will identify for the requestor what additional information or documents are required for DOJ to review the request. Such information must be provided to DOJ promptly. Once the additional information has been received, DOJ will issue an opinion within 30 days of receipt of that additional information.[413] DOJ's FCPA opinions state whether, for purposes of DOJ's present enforcement policy, the prospective conduct would violate either the issuer or domestic concern anti-bribery provisions of the FCPA.[414] DOJ also may take other positions in the opinion as it considers appropriate.[415] To the extent that the opinion concludes that the proposed conduct would not violate the FCPA, a rebuttable presumption is created that the requestor's conduct that was the basis of the opinion is in compliance with the FCPA.[416] In order to provide non-binding guidance to the business community, DOJ makes versions of its opinions publicly available on its website.[417]

If, after receiving an opinion, a party is concerned about prospective conduct that is beyond the scope of conduct specified in a previous request, the party may submit an additional request for an opinion using the procedures outlined above.[418]

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CONCLUSION

The FCPA was designed to prevent corrupt practices, protect investors, and provide a fair playing field for those honest companies trying to win business based on quality and price rather than bribes. Following Congress' leadership in enacting the FCPA 35 years ago, and through determined international diplomatic and law enforcement efforts in the time since, laws like the FCPA prohibiting foreign bribery have been enacted by most of the United States' major trading partners.

This guide is designed to provide practical advice about, and useful insights into, our enforcement considerations. For businesses desiring to compete fairly in foreign markets, it is our goal to maximize those businesses' ability to comply with the FCPA in the most effective and efficient way suitable to their business and the markets in which they operate. Through our ongoing efforts with the U.S. and international business and legal communities and non-governmental organizations, DOJ and SEC can continue effectively to protect the integrity of our markets and reduce corruption around the world.

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THE FOREIGN CORRUPT PRACTICES ACT:

15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3, 78m, 78ff

15 U.S.C. § 78dd-1 [Section 30A of the Securities Exchange Act of 1934] Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or

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candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (g) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weight all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's

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present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—
(i) an organization that is designated by Executive Order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or
(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(2) (A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(g) Alternative Jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 78*l* of this title or which is required to file reports under section 78o(d)) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of this subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

15 U.S.C. § 78dd-2 Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce

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corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (i) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) or (i) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so

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ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by Attorney General

Not later than 6 months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the domestic concern, by made publicly available, regardless of whether the Attorney General response to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) Penalties

(1)(A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined not more than $2,000,000.

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(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that has been designated by Executive order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(i) Alternative Jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

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(2) As used in this subsection, a "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

15 U.S.C. § 78dd-3 Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 78dd-1 [Section 30A of the Exchange Act] of this title or a domestic concern, or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice

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constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than $2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term "person," when referring to an offender, means any natural person other than a national of the United States (as defined in 8 U.S.C. § 1101) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

For purposes of subparagraph (A), the term "public international organization" means—
(i) an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or
(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

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(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

* * *

15 U.S.C. § 78m [Section 13 of the Securities Exchange Act of 1934]

Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 [15 U.S.C. §§ 77a, et seq.] and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting

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principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 7219 of this title.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues such a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 78l of this title or an issuer which is required to file reports pursuant to section 78o(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

* * *

15 U.S.C. § 78ff Penalties [Section 32 of the Securities Exchange Act of 1934]

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title [Section 30A of the Exchange Act]), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be fined not more than $2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd-1

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[Section 30A of the Exchange Act]of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

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ENDNOTES

[1] S. Rep. No. 95-114, at 4 (1977) [hereinafter S. Rep. No. 95-114], *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/senaterpt-95-114.pdf.

[2] *Id.*; H.R. Rep. No. 95-640, at 4-5 (1977) [hereinafter H. R. Rep. No. 95-640], *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/houseprt-95-640.pdf. The House Report made clear Congress's concerns:

> The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system. It short-circuits the marketplace by directing business to those companies too inefficient to compete in terms of price, quality or service, or too lazy to engage in honest salesmanship, or too intent upon unloading marginal products. In short, it rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business.

Id.

[3] *See, e.g.*, U.S. Agency for Int'l Dev., USAID Anticorruption Strategy 5-6 (2005), *available at* http://transition.usaid.gov/policy/ads/200/200mbo.pdf. The growing recognition that corruption poses a severe threat to domestic and international security has galvanized efforts to combat it in the United States and abroad. *See, e.g.*, Int'l Anti-Corruption and Good Governance Act of 2000, Pub. L. No. 106-309, § 202, 114 Stat. 1090 (codified as amended at 22 U.S.C. §§ 2151-2152 (2000)) (noting that "[w]idespread corruption endangers the stability and security of societies, undermines democracy, and jeopardizes the social, political, and economic development of a society. . . . [and that] [c]orruption facilitates criminal activities, such as money laundering, hinders economic development, inflates the costs of doing business, and undermines the legitimacy of the government and public trust").

[4] *See* Maryse Tremblay & Camille Karbassi, *Corruption and Human Trafficking* 4 (Transparency Int'l, Working Paper No. 3, 2011), *available at* http://issuu.com/transparencyinternational/docs/ti-working_paper_human_trafficking_28_jun_2011; U.S. Agency for Int'l Dev., Foreign Aid in the National Interest 40 (2002), *available at* http://pdf.usaid.gov/pdf_docs/PDABW900.pdf ("No problem does more to alienate citizens from their political leaders and institutions, and to undermine political stability and economic development, than endemic corruption among the government, political party leaders, judges, and bureaucrats. The more endemic the corruption is, the more likely it is to be accompanied by other serious deficiencies in the rule of law: smuggling, drug trafficking, criminal violence, human rights abuses, and personalization of power.").

[5] President George W. Bush observed in 2006 that "the culture of corruption has undercut development and good governance and . . . . impedes our efforts to promote freedom and democracy, end poverty, and combat international crime and terrorism." President's Statement on Kleptocracy, 2 Pub. Papers 1504 (Aug. 10, 2006), *available at* http://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060810.html. The administrations of former President George W. Bush and President Barack Obama both recognized the threats posed to security and stability by corruption. For instance, in issuing a proclamation restricting the entry of certain corrupt foreign public officials, former President George W. Bush recognized "the serious negative effects that corruption of public institutions has on the United States' efforts to promote security and to strengthen democratic institutions and free market systems. . . ." Proclamation No. 7750, 69 Fed. Reg. 2287 (Jan. 14, 2004). Similarly, President Barack Obama's National Security Strategy paper, released in May 2010, expressed the administration's efforts and commitment to promote the recognition that "pervasive corruption is a violation of basic human rights and a severe impediment to development and global security." The White House, National Security Strategy 38 (2010), *available at* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

[6] *See, e.g.*, Int'l Chamber of Commerce, et al., Clean Business Is Good Business: The Business Case Against Corruption (2008), *available at* http://www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf; World Health Org., *Fact Sheet No. 335, Medicines: Corruption and Pharmaceuticals* (Dec. 2009), *available at* http://www.who.int/mediacentre/factsheets/fs335/en/; Daniel Kaufmann, *Corruption: The Facts*, Foreign Pol'y, Summer 1997, at 119-20; Paolo Mauro, *Corruption and Growth*, 110 Q. J. Econ. 681, 683, 705 (1995) (finding that "corruption lowers private investment . . . [and] reduc[es] economic growth . . ."); The World Bank, The Data Revolution: Measuring Governance and Corruption, (Apr. 8, 2004), *available at* http://go.worldbank.org/87JUY8GJH0.

[7] *See, e.g.*, *The Corruption Eruption*, Economist (Apr. 29, 2010), *available at* http://www.economist.com/node/16005114 ("The hidden costs of corruption are almost always much higher than companies imagine. Corruption inevitably begets ever more corruption: bribe-takers keep returning to the trough and bribe-givers open themselves up to blackmail."); Daniel Kaufmann and Shang-Jin Wei, *Does "Grease Money" Speed Up the Wheels of Commerce?* 2 (Nat'l Bureau of Econ. Research, Working Paper No. 7093, 1999), *available at* http://www.nber.org/papers/w7093.pdf ("Contrary to the 'efficient grease' theory, we find

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that firms that pay more bribes are also likely to spend more, not less, management time with bureaucrats negotiating regulations, and face higher, not lower, cost of capital.").

[8] For example, in a number of recent enforcement actions, the same employees who were directing or controlling the bribe payments were also enriching themselves at the expense of the company. *See, e.g.*, Complaint, SEC v. Peterson, No. 12-cv-2033 (E.D.N.Y. 2012), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2012/comp-pr2012-78.pdf; Criminal Information, United States v. Peterson, No. 12-cr-224 (E.D.N.Y. 2012), ECF No. 7 [hereinafter *United States v. Peterson*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/petersong/petersong-information.pdf; Plea Agreement, United States v. Stanley, No. 08-cr-597 (S.D. Tex. 2008), ECF No. 9 [hereinafter *United States v. Stanley*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/stanleya/09-03-08stanley-plea-agree.pdf; Plea Agreement, United States v. Sapsizian, No. 06-cr-20797 (S.D. Fla. 2007), ECF No. 42 [hereinafter *United States v. Sapsizian*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sapsizianc/06-06-07sapsizian-plea.pdf.

[9] *See, e.g.*, Complaint, SEC v. Tyco Int'l Ltd., 06-cv-2942 (S.D.N.Y. 2006), ECF No. 1 [hereinafter *SEC v. Tyco Int'l*], *available at* http://www.sec.gov/litigation/complaints/2006/comp19657.pdf; Complaint, SEC v. Willbros Group, Inc., No. 08-cv-1494 (S.D. Tex. 2008), ECF No. 1 [hereinafter *SEC v. Willbros*], *available at* http://www.sec.gov/litigation/complaints/2008/comp20571.pdf.

[10] *See* Plea Agreement, United States v. Bridgestone Corp., No. 11-cr-651 (S.D. Tex. 2011), ECF No. 21, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/bridgestone/10-05-11bridgestone-plea.pdf.

[11] *See* S. Rep. No. 95-114, at 6; H.R. Rep. 95-640, at 4; *see also* A. Carl Kotchian, *The Payoff: Lockheed's 70-Day Mission to Tokyo*, Saturday Rev., Jul. 9, 1977, at 7.

[12] U.S. Sec. and Exchange Comm., Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices 2-3 (1976).

[13] *See* H.R. Rep. No. 95-640, at 4-5; S. Rep. No. 95-114, at 3-4.

[14] H.R. Rep. No. 95-640, at 4-5; S. Rep. No. 95-114, at 4. The Senate Report observed, for instance, that "[m]anagements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves," while citing the Secretary of the Treasury's testimony that "'[p]aying bribes—apart from being morally repugnant and illegal in most countries—is simply not necessary for the successful conduct of business here or overseas.'" *Id.*

[15] *See* S. Rep. No. 100-85, at 46 (1987) (recounting FCPA's historical background and explaining that "a strong antibribery statute could help U.S. corporations resist corrupt demands . . . .") [hereinafter S. Rep. No. 100-85].

[16] S. Rep. No. 95-114, at 7.

[17] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5003, 102 Stat. 1107, 1415-25 (1988); *see also* H.R. Rep. No. 100-576, at 916-24 (1988) (discussing FCPA amendments, including changes to standard of liability for acts of third parties) [hereinafter H.R. Rep. No. 100-576].

[18] *See* Omnibus Trade and Competitiveness Act of 1988, § 5003(d). The amended statute included the following directive:

> It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

Id.; *see also* S. Rep. No. 105-277, at 2 (1998) (describing efforts by Executive Branch to encourage U.S. trading partners to enact legislation similar to FCPA following 1988 amendments) [hereinafter S. Rep. No. 105-277].

[19] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions art. 1.1, Dec. 18, 1997, 37 I.L.M. 1 [hereinafter Anti-Bribery Convention]. The Anti-Bribery Convention requires member countries to make it a criminal offense "for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." The Convention and its commentaries also call on all parties (a) to ensure that aiding and abetting and authorization of an act of bribery are criminal offenses, (b) to assert territorial jurisdiction "broadly so that an extensive physical connection to the bribery act is not required," and (c) to assert nationality jurisdiction consistent with the general principles and conditions of each party's legal system. *Id.* at art. 1.2, cmts. 25, 26.

[20] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366, 112 Stat. 3302 (1998); *see also* S. Rep. No. 105-277, at 2-3 (describing amendments to "the FCPA to conform it to the requirements of and to implement the OECD Convention").

[21] There is no private right of action under the FCPA. *See, e.g.*, Lamb v. Phillip Morris, Inc., 915 F.2d 1024, 1028-29 (6th Cir. 1990); McLean v. Int'l Harvester Co., 817 F.2d 1214, 1219 (5th Cir. 1987).

[22] U.S. Dept. of Justice, U.S. Attorneys' Manual § 9-47.110 (2008) [hereinafter USAM], *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/.

[23] Go to http://export.gov/worldwide_us/index.asp for more information.

[24] Additional information about publicly available market research and due diligence assistance is available online. *See* In'l Trade Admin., *Market Research and Due Diligence*, *available at* http://export.gov/salesandmarketing/eg_main_018204.asp. The International Company Profile reports include a listing of the potential partner's key officers and senior management; banking relationships and other financial information about the company; and market information, including sales and profit figures and potential liabilities. They are not, however, intended to substitute for a company's own due diligence, and the Commercial Service does not offer ICP in countries where Dun & Bradstreet or other private sector vendors are already performing this service. *See* In'l Trade Admin., *International Company Profile*, *available at* http://export.gov/salesandmarketing/eg_main_018198.asp.

[25] The Commercial Services' domestic and foreign offices can also be found at http://export.gov/usoffices/index.asp and http://export.gov/worldwide_us/index.asp.

[26] This form can be located at http://tcc.export.gov/Report_a_Barrier/index.asp.

[27] *See* In'l Trade Admin., "Doing Business In" Guides, *available at* http://export.gov/about/eg_main_016806.asp.

[28] The Business Ethics Manual is available at http://www.ita.doc.gov/goodgovernance/business_ethics/manual.asp.

[29] Information about the Advocacy Center can be found at http://export.gov/advocacy.

[30] Reports on U.S. compliance with these treaties can be found at http://www.justice.gov/criminal/fraud/fcpa/intlagree/.

[31] *See* Statement on Signing the International Anti-Bribery and Fair Competition Act of 1998, 34 Weekly Comp. Pres. Doc. 2290, 2291 (Nov. 10, 1998) ("U.S. companies have had to compete on an uneven playing field . . . . The OECD Convention . . . is designed to change all that. Under the Convention, our major competitors will be obligated to criminalize the bribery of foreign public officials in international business transactions.").

[32] Colombia is also a member of the Working Group and is expected to accede to the Anti-Bribery Convention.

[33] OECD, *Country Monitoring of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/12/0,3746,en_2649_34859_35692940_1_1_1_1,00.html.

[34] OECD, *Phase 3 Country Monitoring of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/31/0,3746,en_2649_34859_44684959_1_1_1_1,00.html.

[35] OECD, *Country Reports on the Implementation of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/24/0,3746,en_2649_34859_1933144_1_1_1_1,00.html.

[36] The OECD Phase 1, 2, and 3 reports on the United States, as well as the U.S. responses to questionnaires, are available at http://www.justice.gov/criminal/fraud/fcpa/intlagree.

[37] *See* OECD Working Group on Bribery, *United States: Phase 3, Report on the Application of the Convention on Combating Bribery of Foreign*

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Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions, Oct. 2010, at 61-62 (recommending that the United States "[c]onsolidate and summarise publicly available information on the application of the FCPA in relevant sources"), *available at* http://www.oecd.org/dataoecd/10/49/46213841.pdf.

[38] United Nations Convention Against Corruption, Oct. 31, 2003, S. Treaty Doc. No. 109-6, 2349 U.N.T.S. 41, *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf [hereinafter UNCAC].

[39] For more information about the UNCAC review mechanism, see *Mechanism for the Review of Implementation of the United Nations Convention Against Corruption*, United Nations Office on Drugs and Crime, *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

[40] For information about the status of UNCAC, see United Nations Office on Drugs and Crime, *UNCAC Signature and Ratification Status as of 12 July 2012*, *available at* http://www.unodc.org/unodc/en/treaties/CAC/signatories.html.

[41] Organization of American States, Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, *available at* http://www.oas.org/juridico/english/treaties/b-58.html. For additional information about the status of the IACAC, see Organization of American States, Signatories and Ratifications, *available at* http://www.oas.org/juridico/english/Sigs/b-58.html.

[42] Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, 38 I.L.M. 505, *available at* http://conventions.coe.int/Treaty/en/Treaties/html/173.htm.

[43] For additional information about GRECO, see Council of Europe, *Group of States Against Corruption*, *available at* http://www.coe.int/t/dghl/monitoring/greco/default_EN.asp. The United States has not yet ratified the GRECO convention.

[44] The text of the FCPA statute is set forth in the appendix. *See also* Jury Instructions at 21-27, United States v. Esquenazi, No. 09-cr-21010 (S.D. Fla. Aug. 5, 2011), ECF No. 520 [hereinafter *United States v. Esquenazi*] (FCPA jury instructions); Jury Instructions at 14-25, United States v. Kay, No. 01-cr-914 (S.D. Tex. Oct. 6, 2004), ECF No. 142 (same), *aff'd*, 513 F.3d 432, 446-52 (5th Cir. 2007), *reh'g denied*, 513 F.3d 461 (5th Cir. 2008) [hereinafter *United States v. Kay*]; Jury Instructions at 76-87, United States v. Jefferson, No. 07-cr-209 (E.D. Va. July 30, 2009), ECF No. 684 [hereinafter *United States v. Jefferson*] (same); Jury Instructions at 8-10, United States v. Green, No. 08-cr-59 (C.D. Cal. Sept. 11, 2009), ECF No. 288 [hereinafter *United States v. Green*] (same); Jury Instructions at 23-29, United States v. Bourke, No. 05-cr-518 (S.D.N.Y. July 2009) [hereinafter *United States v. Bourke*] (same, not docketed); Jury Instructions at 2-8, United States v. Mead, No. 98-cr-240 (D.N.J. Oct. 1998) [hereinafter *United States v. Mead*] (same).

[45] The provisions of the FCPA applying to issuers are part of the Securities Exchange Act of 1934 [hereinafter Exchange Act]. The anti-bribery provisions can be found at Section 30A of the Exchange Act, 15 U.S.C. § 78dd-1.

[46] 15 U.S.C. § 78*l*.

[47] 15 U.S.C. § 78*o*(d).

[48] SEC enforcement actions have involved a number of foreign issuers. *See, e.g.*, Complaint, SEC v. Magyar Telekom Plc., *et al.*, No. 11-cv-9646 (S.D.N.Y. Dec. 29, 2011), ECF No. 1 (German and Hungarian companies), *available at* http://www.sec.gov/litigation/complaints/2011/comp22213-co.pdf; Complaint, SEC v. Alcatel-Lucent, S.A., No. 10-cv-24620 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *SEC v. Alcatel-Lucent*] (French company), *available at* http://www.sec.gov/litigation/complaints/2010/comp21795.pdf; Complaint, SEC v. ABB, Ltd., No. 10-cv-1648 (D.D.C. Sept. 29, 2010), ECF No. 1 [hereinafter *SEC v. ABB*] (Swiss company), *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-175.pdf; Complaint, SEC v. Daimler AG, No. 10-cv-473 (D.D.C. Apr. 1, 2010), ECF No. 1 [hereinafter *SEC v. Daimler AG*] (German company), *available at* http://sec.gov/litigation/complaints/2010/comp-pr2010-51.pdf; Complaint, SEC v. Siemens Aktiengesellschaft, No. 08-cv-2167 (D.D.C. Dec. 12, 2008), ECF No. 1 [hereinafter *SEC v. Siemens AG*] (Germany company), *available at* http://www.sec.gov/litigation/complaints/2008/comp20829.pdf. Certain DOJ enforcement actions have likewise involved foreign issuers. *See, e.g.*, Criminal Information, United States v. Magyar Telekom, Plc., No. 11-cr-597 (E.D. Va. Dec. 29, 2011), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/magyar-telekom/2011-12-29-information-magyar-telekom.pdf; Non-Pros. Agreement, In re Deutsche Telekom AG (Dec. 29, 2011), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/deutsche-telekom/2011-12-29-deustche-telekom-npa.pdf; Criminal Information, United States v. Alcatel-Lucent, S.A., No. 10-cr-20907 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *United States v. Alcatel-Lucent, S.A.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-etal/12-27-10alcatel-et-al-info.pdf; Criminal Information, United States v. Daimler AG, No. 10-cr-63 (D.D.C. Mar. 22, 2010), ECF No. 1 [hereinafter *United States v. Daimler AG*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/daimler/03-22-10daimlerag-info.pdf; Criminal Information, United States v. Siemens Aktiengesellschaft, No. 08-cr-367 (D.D.C. Dec. 12, 2008), ECF No. 1 [hereinafter *United States v. Siemens AG*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-12-08siemensakt-info.pdf.

[49] *See* http://www.sec.gov/divisions/corpfin/internatl/companies.shtml.

[50] *See, e.g.*, Complaint, SEC v. Turner, *et al.*, No. 10-cv-1309 (D.D.C. Aug. 4, 2010), ECF No. 1 [hereinafter, *SEC v. Turner*] (charging a Lebanese/Canadian agent of a UK company listed on U.S. exchange with violating the FCPA for bribes of Iraqi officials), *available at* http://www.sec.gov/litigation/complaints/2010/comp21615.pdf; Indictment, United States v. Naaman, No. 08-cr-246 (D.D.C. Aug. 7, 2008), ECF No. 3 [hereinafter *United States v. Naaman*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/naamano/08-07-08naaman-indict.pdf; Complaint, SEC v. Elkin, *et al.*, No. 10-cv-661 (D.D.C. Apr. 28, 2010), ECF No. 1 [hereinafter *SEC v. Elkin*] (charging an employee of U.S. publicly traded company with violating FCPA for bribery of officials in Kyrgyzstan), *available at* http://www.sec.gov/litigation/complaints/2010/comp21509.pdf; Criminal Information, United States v. Elkin, No. 10-cr-15 (W.D. Va. Aug. 3, 2010), ECF No. 8 [hereinafter *United States v. Elkin*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/elkin/08-03-10elkin-information.pdf; Indictment, United States v. Tesler, *et al.*, No. 09-cr-98 (S.D. Tex. Feb. 17, 2009), ECF No. 1 [hereinafter *United States v. Tesler*] (charging a British agent of U.S. publicly traded company with violating the FCPA for bribery of Nigerian officials), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tesler/tesler-indict.pdf; Superseding Indictment, *United States v. Sapsizian*, et al., *supra* note 8, ECF 32 (charging a French employee of French company traded on a U.S. exchange with violating the FCPA).

[51] 15 U.S.C. § 78dd-2.

[52] 15 U.S.C. § 78dd-2(h)(1).

[53] 15 U.S.C. § 78dd-2(a). *See, e.g.*, Superseding Indictment, United States v. Nexus Technologies, *et al.*, No. 08-cr-522 (E.D. Pa. Oct. 28, 2009), ECF No. 106 [hereinafter *United States v. Nexus Technologies*] (private U.S. company and corporate executives charged with violating FCPA for bribes paid in Vietnam), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/nguyenn/09-04-08nguyen-indict.pdf; Indictment, *United States v. Esquenazi*, *supra* note 44, (private U.S. company and corporate executives charged with FCPA violations for bribes paid in Haiti), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/esquenazij/12-08-09esquenazi-indict.pdf.

[54] 15 U.S.C. § 78dd-3(a). As discussed above, foreign companies that have securities registered in the United States or that are required to file periodic reports with the SEC, including certain foreign companies with American Depository Receipts, are covered by the FCPA's anti-bribery provisions governing "issuers" under 15 U.S.C. § 78dd-1.

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[55] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366, 112 Stat. 3302 (1998); 15 U.S.C. § 78dd-3(a); *see also* U.S. Dept. of Justice, Criminal Resource Manual § 9-1018 (Nov. 2000) (the Department "interprets [Section 78dd-3(a)] as conferring jurisdiction whenever a foreign company or national *causes* an act to be done within the territory of the United States by any person acting as that company's or national's agent."). This interpretation is consistent with U.S. treaty obligations. *See* S. Rep. No. 105-2177 (1998) (expressing Congress' intention that the 1998 amendments to the FCPA "conform it to the requirements of and to implement the OECD Convention."); Anti-Bribery Convention at art. 4.1, *supra* note 19 ("Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.").

[56] 15 U.S.C. § 78dd-3(a); *see, e.g.*, Criminal Information, United States v. Alcatel-Lucent France, S.A., *et al.*, No. 10-cr-20906 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *United States v. Alcatel-Lucent France*] (subsidiary of French publicly traded company convicted of conspiracy to violate FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-lucent-sa-etal/12-27-10alcatel-et-al-info.pdf; Criminal Information, United States v. DaimlerChrysler Automotive Russia SAO, No. 10-cr-64 (D.D.C. Mar. 22, 2010), ECF No. 1 (subsidiary of German publicly traded company convicted of violating FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/daimler/03-22-10daimlerrussia-info.pdf; Criminal Information, United States v. Siemens S.A. (Argentina), No. 08-cr-368 (D.D.C. Dec. 12, 2008), ECF No. 1 (subsidiary of German publicly traded company convicted of violating FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-12-08siemensargen-info.pdf.

[57] *See* 15 U.S.C. §§ 78dd-2(h)(5) (defining "interstate commerce"), 78dd-3(f)(5) (same); *see also* 15 U.S.C. §78c(a)(17).

[58] 15 U.S.C. §§ 78dd-2(h)(5), 78dd-3(f)(5).

[59] *See* 15 U.S.C. § 78dd-3.

[60] Criminal Information, United States v. JGC Corp., No. 11-cr-260 (S.D. Tex. Apr. 6, 2011), ECF No. 1 [hereinafter *United States v. JGC Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/jgc-corp/04-6-11jgc-corp-info.pdf; Criminal Information, United States v. Snamprogetti Netherlands B.V., No. 10-cr-460 (S.D. Tex. Jul. 7, 2010), ECF No. 1 [hereinafter *United States v. Snamprogetti*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/snamprogetti/07-07-10snamprogetti-info.pdf.

[61] *See* 15 U.S.C. §§ 78dd-1(g) ("irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization"), 78dd-2(i)(1) ("irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization").

[62] S. Rep. No. 105-277 at 2 ("[T]he OECD Convention calls on parties to assert nationality jurisdiction when consistent with national legal and constitutional principles. Accordingly, the Act amends the FCPA to provide for jurisdiction over the acts of U.S. businesses and nationals in furtherance of unlawful payments that take place wholly outside the United States. This exercise of jurisdiction over U.S. businesses and nationals for unlawful conduct abroad is consistent with U.S. legal and constitutional principles and is essential to protect U.S. interests abroad.").

[63] *Id.* at 2-3.

[64] 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

[65] *See* H.R. Rep. No. 95-831, at 12 (referring to "business purpose" test).

[66] *See, e.g.*, Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48.

[67] In amending the FCPA in 1988, Congress made clear that the business purpose element, and specifically the "retaining business" prong, was meant to be interpreted broadly:

> The Conferees wish to make clear that the reference to corrupt payments for "retaining business" in present law is not limited to the renewal of contracts or other business, but also includes a prohibition against corrupt payments related to the execution or performance of contracts or the carrying out of existing business, such as a payment to a foreign official for the purpose of obtaining more favorable tax treatment. The term should not, however, be construed so broadly as to include lobbying or other normal representations to government officials.

H.R. Rep. No. 100-576, at 1951-52 (internal citations omitted).

[68] *See, e.g.*, Complaint, SEC v. Panalpina, Inc., No. 10-cv-4334 (S.D. Tex. Nov. 4, 2010), ECF No. 1 [hereinafter *SEC v. Panalpina, Inc.*], *available at* http://www.sec.gov/litigation/complaints/2010/comp21727.pdf; Criminal Information, United States v. Panalpina, Inc., No. 10-cr-765 (S.D. Tex. Nov. 4, 2010), ECF No. 1 [hereinafter *United States v. Panalpina, Inc.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/panalpina-inc/11-04-10panalpina-info.pdf; Criminal Information, United States v. Panalpina World Transport (Holding) Ltd., No. 10-cr-769 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/panalpina-world/11-04-10panalpina-world-info.pdf; *see also* Press Release, U.S. Sec. and Exchange Comm., SEC Charges Seven Oil Services and Freight Forwarding Companies for Widespread Bribery of Customs Officials (Nov. 4, 2010) ("The SEC alleges that the companies bribed customs officials in more than 10 countries in exchange for such perks as avoiding applicable customs duties on imported goods, expediting the importation of goods and equipment, extending drilling contracts, and lowering tax assessments."), *available at* http://www.sec.gov/news/press/2010/2010-214.htm; Press Release, U.S. Dept. of Justice, Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than $156 Million in Criminal Penalties (Nov. 4, 2010) (logistics provider and its subsidiary engaged in scheme to pay thousands of bribes totaling at least $27 million to numerous foreign officials on behalf of customers in oil and gas industry "to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions"), *available at* http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html.

[69] United States v. Kay, 359 F.3d 738, 755-56 (5th Cir. 2004).

[70] *Id.* at 749. Indeed, the *Kay* court found that Congress' explicit exclusion of facilitation payments from the scope of the FCPA was evidence that "Congress intended for the FCPA to prohibit *all other* illicit payments that are intended to influence non-trivial official foreign action in an effort to aid in obtaining or retaining business for some person." *Id.* at 749-50 (emphasis added).

[71] *Id.* at 750.

[72] *Id.* at 749-55.

[73] *Id.* at 756 ("It still must be shown that the bribery was intended to produce an effect—here, through tax savings—that would 'assist in obtaining or retaining business.'").

[74] The FCPA does not explicitly define "corruptly," but in drafting the statute Congress adopted the meaning ascribed to the same term in the domestic bribery statute, 18 U.S.C. § 201(b). *See* H.R. Rep. No. 95-640, at 7.

[75] The House Report states in full:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position; for example, wrongfully to direct business to the payor or his client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function. The word "corruptly" connotes an evil motive or purpose such as that required under 18 U.S.C. 201(b) which prohibits domestic bribery. As in 18 U.S.C. 201(b), the word "corruptly" indicates an intent or desire wrongfully to influence the recipient. It does not require that the act [be] fully consummated or succeed in producing the desired outcome.

Id. The Senate Report provides a nearly identical explanation of the meaning of the term:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position in order to wrongfully direct business to the payor or his client, or to obtain

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> preferential legislation or a favorable regulation. The word "corruptly" connotes an evil motive or purpose, an intent to wrongfully influence the recipient.

S. Rep. No. 95-114, at 10.

[76] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

[77] *See, e.g.*, Complaint, SEC v. Monsanto Co., No. 05-cv-14 (D.D.C. Jan. 6, 2005) (among other things, the company paid a $50,000 bribe to influence an Indonesian official to repeal an unfavorable law, which was not repealed despite the bribe), *available at* http://www.sec.gov/litigation/complaints/comp19023.pdf; Criminal Information, United States v. Monsanto Co., No. 05-cr-8 (D.D.C. Jan. 6, 2005), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/monsanto-co/01-06-05monsanto-info.pdf.

[78] Jury instructions in FCPA cases have defined "corruptly" consistent with the definition found in the legislative history. *See, e.g.*, Jury Instructions at 22-23, *United States v. Esquenazi*, *supra* note 44; Jury Instructions at 10, *United States v. Green*, *supra* note 44; Jury Instructions at 35, *United States v. Jefferson*, *supra* note 44; Jury Instructions at 25, *United States v. Bourke*, *supra* note 44; Jury Instructions at 17, *United States v. Kay*, *supra* note 44; Jury Instructions at 5, *United States v. Mead*, *supra* note 44.

[79] *See* Complaint, SEC v. Innospec, Inc., No. 10-cv-448 (D.D.C. Mar. 18, 2010), ECF No. 1 [hereinafter *SEC v. Innospec*], *available at* http://www.sec.gov/litigation/complaints/2010/comp21454.pdf; Criminal Information at 8, United States v. Innospec Inc., No. 10-cr-61 (D.D.C. Mar. 17, 2010), ECF No. 1 [hereinafter *United States v. Innospec*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/innospec-inc/03-17-10innospec-info.pdf.

[80] *See* Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79.

[81] *See* 15 U.S.C. §§ 78dd-1(c)(2)(A), 78dd-2(g)(2)(A), and 78dd-3(3)(2)(A).

[82] *Compare* 15 U.S.C. § 78ff(c)(1)(A) (corporate criminal liability under issuer provision) *with* § 78ff(c)(2)(A) (individual criminal liability under issuer provision); *compare* 15 U.S.C. § 78dd-2(g)(1)(A) (corporate criminal liability under domestic concern provision) *with* § 78dd-2(g)(2)(A) (individual criminal liability under issuer provision); *compare* 15 U.S.C. § 78dd-3(e)(1)(A) (corporate criminal liability for territorial provision) *with* § 78dd-3(e)(2)(A) (individual criminal liability for territorial provision). However, companies still must act corruptly. *See* Section 30A(a), 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), 78dd-3(a).

[83] United States v. Kay, 513 F.3d 432, 448 (5th Cir. 2007); *see also* Jury Instructions at 38, *United States v. Esquenazi*, *supra* note 44; Jury Instructions at 10, *United States v. Green*, *supra* note 44; Jury Instructions at 35, *United States v. Jefferson*, *supra* note 44; Jury Instructions at 25, *United States v. Bourke*, *supra* note 44; Jury Instructions at 5, *United States v. Mead*, *supra* note 44.

[84] Bryan v. United States, 524 U.S. 184, 191-92 (1998) (construing "willfully" in the context of 18 U.S.C. § 924(a)(1)(A)) (quoting Ratzlaf v. United States, 510 U.S. 135, 137 (1994)); *see also Kay*, 513 F.3d at 446-51 (discussing *Bryan* and term "willfully" under the FCPA).

[85] *Kay*, 513 F.3d at 447-48; Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt Int'l B.V. v. Schreiber, 327 F.3d 173, 181 (2d Cir. 2003).

[86] The phrase "anything of value" is not defined in the FCPA, but the identical phrase under the domestic bribery statute has been broadly construed to include both *tangible* and *intangible* benefits. *See, e.g.*, United States v. Moore, 525 F.3d 1033, 1048 (11th Cir. 2008) (rejecting defendant's objection to instruction defining sex as a "thing of value," which "unambiguously covers intangible considerations"); United States v. Gorman, 807 F.2d 1299, 1304-05 (6th Cir. 1986) (holding that loans and promises of future employment are "things of value"); United States v. Williams, 705 F.2d 603, 622-23 (2d Cir. 1983) (approving jury instruction that stock could be a "thing of value" if defendant believed it had value, even though the shares had no commercial value, and noting that "[t]he phrase 'anything of value' in bribery and related statutes has consistently been given a broad meaning").

[87] Section 30A(a), 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), 78dd-3(a) (emphasis added).

[88] Like the FCPA, the domestic bribery statute, 18 U.S.C. § 201, prohibits giving, offering, or promising "anything of value." Numerous domestic bribery cases under Section 201 have involved "small" dollar bribes. *See, e.g.*, United States v. Franco, 632 F.3d 880, 882-84 (5th Cir. 2011) (affirming bribery convictions of inmate for paying correctional officer $325 to obtain cell phone, food, and marijuana, and noting that 18 U.S.C. § 201 does not contain minimum monetary threshold); United States v. Williams, 216 F.3d 1099, 1103 (D.C. Cir. 2000) (affirming bribery conviction for $70 bribe to vehicle inspector); United States v. Traitz, 871 F.2d 368, 396 (3rd Cir. 1989) (affirming bribery conviction for $100 bribe paid to official of Occupational Health and Safety Administration); United States v. Hsieh Hui Mei Chen, 754 F.2d 817, 822 (9th Cir. 1985) (affirming bribery convictions including $100 bribe to immigration official); United States v. Bishton, 463 F.2d 887, 889 (D.C. Cir. 1972) (affirming bribery conviction for $100 bribe to division chief of District of Columbia Sewer Operations Division).

[89] Complaint, *SEC v. Daimler AG*, *supra* note 48; Criminal Information, *United States v. Daimler AG*, *supra* note 48.

[90] Complaint, SEC v. Halliburton Company and KBR, Inc., No. 09-cv-399 (S.D. Tex. Feb. 11, 2009), ECF No 1 [hereinafter *SEC v. Halliburton and KBR*], *available at* http://www.sec.gov/litigation/complaints/2009/comp20897.pdf; Criminal Information, United States v. Kellogg Brown & Root LLC, No. 09-cr-71, ECF No. 1 (S.D. Tex. Feb. 6, 2009) [hereinafter *United States v. KBR*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kelloggb/02-06-09kbr-info.pdf.

[91] Complaint, *SEC v. Halliburton and KBR*, *supra* note 90; Criminal Information, *United States v. KBR*, *supra* note 90.

[92] *See, e.g.*, Complaint, SEC v. RAE Sys. Inc., No. 10-cv-2093 (D.D.C. Dec. 10, 2010), ECF No. 1 [hereinafter *SEC v. RAE Sys., Inc.*] (fur coat, among other extravagant gifts), *available at* http://www.sec.gov/litigation/complaints/2010/comp21770.pdf; Non-Pros. Agreement, In re RAE Sys. Inc. (Dec. 10, 2010) [hereinafter *In re RAE Sys. Inc.*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/rae-systems/12-10-10rae-systems.pdf; Complaint, *SEC v. Daimler AG*, *supra* note 48 (armored Mercedes Benz worth €300,000); Criminal Information, *United States v. Daimler AG*, *supra* note 48 (same).

[93] *See* Complaint, SEC v. ABB Ltd, No. 04-cv-1141 (D.D.C. July 6, 2004), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp18775.pdf; Criminal Information, United States v. ABB Vetco Gray Inc., *et al.*, No. 04-cr-279 (S.D. Tex. June 22, 2004), ECF No. 1 [hereinafter *United States v. ABB Vetco Gray*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/abb/06-22-04abbvetco-info.pdf.

[94] Complaint, SEC v. UTStarcom, Inc., No. 09-cv-6094 (N.D. Cal. Dec. 31, 2009), ECF No. 1 [hereinafter *SEC v. UTStarcom*], *available at* http://www.sec.gov/litigation/complaints/2009/comp21357.pdf; Non-Pros. Agreement, In re UTStarcom Inc. (Dec. 31, 2009) [hereinafter *In re UTStarcom*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/utstarcom-inc/12-31-09utstarcom-agree.pdf.

[95] Complaint, *SEC v. UTStarcom*, *supra* note 94; Non-Pros. Agreement, *In re UTStarcom*, *supra* note 94.

[96] Complaint, *SEC v. UTStarcom*, *supra* note 94; Non-Pros. Agreement, *In re UTStarcom*, *supra* note 94.

[97] Complaint, SEC v. Lucent Technologies Inc., No. 07-cv-2301 (D.D.C. Dec. 21, 2007), ECF No.1 [hereinafter *SEC v. Lucent*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20414.pdf; Non-Pros. Agreement, In re Lucent Technologies (Nov. 14, 2007) [hereinafter *In re Lucent*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/lucent-tech/11-14-07lucent-agree.pdf.

[98] Complaint, *SEC v. Lucent*, *supra* note 97; Non-Pros. Agreement, *In re Lucent*, *supra* note 97.

[99] The company consented to the entry of a final judgment permanently

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enjoining it from future violations of the books and records and internal controls provisions and paid a civil penalty of $1,500,000. Complaint, *SEC v. Lucent*, *supra* note 97. Additionally, the company entered into a non-prosecution agreement with DOJ and paid a $1,000,000 monetary penalty. Non-Pros. Agreement, *In re Lucent*, *supra* note 97.

[100] United States v. Liebo, 923 F.2d 1308, 1311 (8th Cir. 1991).

[101] Judgment, United States v. Liebo, No. 89-cr-76 (D. Minn. Jan. 31, 1992), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/liebor/1992-01-31-liebor-judgment.pdf.

[102] Complaint, SEC v. Schering-Plough Corp., No. 04-cv-945 (D.D.C. June 9, 2004), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp18740.pdf; Admin. Proceeding Order, In the Matter of Schering-Plough Corp., Exchange Act Release No. 49838 (June 9, 2004) (finding that company violated FCPA accounting provisions and imposing $500,000 civil monetary penalty), *available at* http://www.sec.gov/litigation/admin/34-49838.htm.

[103] FCPA opinion procedure releases can be found at http://www.justice.gov/criminal/fraud/fcpa/. In the case of the company seeking to contribute the $1.42 million grant to a local MFI, DOJ noted that it had undertaken each of these due diligence steps and controls, in addition to others, that would minimize the likelihood that anything of value would be given to any officials of the Eurasian country. U.S. Dept. of Justice, FCPA Op. Release 10-02 (July 16, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1002.pdf.

[104] U.S. Dept. of Justice, FCPA Op. Release 95-01 (Jan. 11, 1995), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1995/9501.pdf.

[105] *Id*.

[106] *Id*.

[107] U.S. Dept. of Justice, FCPA Op. Release 97-02 (Nov. 5, 1997), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1997/9702.pdf; U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2006/0601.pdf.

[108] U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006).

[109] *Id*.

[110] *Id*.

[111] *See* Section 30A(a)(1)-(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(1)-(3); 15 U.S.C. §§ 78dd-2(a)(1)-(3), 78dd-3(a)(1)-(3).

[112] Section 30A(f)(1)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(1)(A); 15 U.S.C. §§ 78dd-2(h)(2)(A), 78dd-3(f)(2)(A).

[113] Under the FCPA, any person "acting in an official capacity for or on behalf of" a foreign government, a department, agency, or instrumentality thereof, or a public international organization, is a foreign official. Section 30A(f)(1)(A), 15 U.S.C. § 78dd-1(f)(1)(A); 15 U.S.C. §§ 78dd-2(h)(2)(A), 78dd-2(f)(2)(A). *See also* U.S. Dept. of Justice, FCPA Op. Release No. 10-03, at 2 (Sept. 1, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1003.pdf (listing safeguards to ensure that consultant was not acting on behalf of foreign government).

[114] *But see* Sections 30A(b) and f(3)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(b) & (f)(3); 15 U.S.C. §§ 78dd-2(b) & (h)(4), 78dd-3(b) & (f)(4) (facilitating payments exception).

[115] Even though payments to a foreign government may not violate the anti-bribery provisions of the FCPA, such payments may violate other U.S. laws, including wire fraud, money laundering, and the FCPA's accounting provisions. This was the case in a series of matters brought by DOJ and SEC involving kickbacks to the Iraqi government through the United Nations Oil-for-Food Programme. *See, e.g.*, Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79; Complaint, SEC v. Novo Nordisk A/S, No. 09-cv-862 (D.D.C. May 11, 2009), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2009/comp21033.pdf; Criminal Information, United States v. Novo Nordisk A/S, No. 09-cr-126 (D.D.C. May 11, 2009), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/nordiskn/05-11-09novo-info.pdf; Complaint, SEC v. Ingersoll-Rand Company Ltd., No. 07-cv-1955 (D.D.C. Oct. 31, 2007), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2007/comp20353.pdf; Criminal Information, United States v. Ingersoll-Rand Italiana SpA, No. 07-cr-294 (D.D.C. Oct. 31, 2007), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ingerand-italiana/10-31-07ingersollrand-info.pdf; Complaint, SEC v. York Int'l Corp., No. 07-cv-1750 (D.D.C. Oct. 1, 2007), ECF No. 1 [hereinafter *SEC v. York Int'l Corp.*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20319.pdf; Criminal Information, United States v. York Int'l Corp., No. 07-cr-253 (D.D.C. Oct. 1, 2007), ECF No. 1 [hereinafter *United States v. York Int'l Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/york/10-01-07york-info.pdf; Complaint, SEC v. Textron Inc., No. 07-cv-1505 (D.D.C. Aug. 23, 2007), ECF No. 1 [hereinafter *SEC v. Textron*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20251.pdf; Non-Pros. Agreement, In re Textron Inc. (Aug. 23, 2007), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/textron-inc/08-21-07textron-agree.pdf. DOJ has issued opinion procedure releases concerning payments (that were, in essence, donations) to government agencies or departments. *See* U.S. Dept. of Justice, FCPA Op. Release 09-01 (Aug. 3, 2009) (involving donation of 100 medical devices to foreign government), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2009/0901.pdf; U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006) (involving contribution of $25,000 to regional customs department to pay incentive rewards to improve local enforcement of anti-counterfeiting laws), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2006/0601.pdf.

[116] The United States has some state-owned entities, like the Tennessee Valley Authority, that are instrumentalities of the government. McCarthy v. Middle Tenn. Elec. Membership Corp., 466 F.3d 399, 411 n.18 (6th Cir. 2006) ("[T]here is no question that TVA is an agency and instrumentality of the United States.") (internal quotes omitted).

[117] During the period surrounding the FCPA's adoption, state-owned entities held virtual monopolies and operated under state-controlled price-setting in many national industries around the world. *See generally* World Bank, Bureaucrats in Business: The Economics and Politics of Government Ownership, World Bank Policy Research Report at 78 (1995); Sunita Kikeri and Aishetu Kolo, State Enterprises, The World Bank Group (Feb. 2006), *available at* http://rru.worldbank.org/documents/publicpolicyjournal/304Kikeri_Kolo.pdf.

[118] *Id*. at 1 ("[A]fter more than two decades of privatization, government ownership and control remains widespread in many regions—and in many parts of the world still dominates certain sectors.").

[119] To date, consistent with the approach taken by DOJ and SEC, all district courts that have considered this issue have concluded that this is an issue of fact for a jury to decide. *See* Order, United States v. Carson, 2011 WL 5101701, No. 09-cr-77 (C.D. Cal. May 18, 2011), ECF No. 373 [hereinafter *United States v. Carson*]; United States v. Aguilar, 783 F. Supp. 2d 1108 (C.D. Cal. 2011); Order, *United States v. Esquenazi*, *supra* note 44, ECF No. 309; *see also* Order, United States v. O'Shea, No. 09-cr-629 (S.D. Tex. Jan. 3, 2012), ECF No. 142; Order, United States v. Nguyen, No. 08-cr-522 (E.D. Pa. Dec. 30, 2009), ECF No. 144. These district court decisions are consistent with the acceptance by district courts around the country of over 35 guilty pleas by individuals who admitted to violating the FCPA by bribing officials of state-owned or state-controlled entities. *See* Government's Opposition to Defendants' Amended Motion to Dismiss Counts One Through Ten of the Indictment at 18, *United States v. Carson*, *supra* note 119, ECF No. 332; Exhibit I, *United States v. Carson*, *supra* note 119, ECF No. 335 (list of examples of enforcement actions based on foreign officials of state-owned entities).

[120] Jury Instructions, *United States v. Esquenazi*, *supra* note 44, ECF No. 520; Order at 5 and Jury Instructions, *United States* v. *Carson*, *supra* note 119, ECF No. 373 and ECF No. 549; *Aguilar*, 783 F. Supp. 2d at 1115.

[121] Criminal Information, United States v. C.E. Millier Corp., *et al.*, No. 82-cr-788 (C.D. Cal. Sept. 17, 1982), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ce-miller/1982-09-17-ce-miller-information.pdf.

[122] *See* Complaint, SEC v. Sam P. Wallace Co., Inc., *et al.*, No. 81-cv-1915 (D.D.C. Aug. 31, 1982); Criminal Information, United States v. Sam P. Wallace Co., Inc., No. 83-cr-34 (D.P.R. Feb. 23, 1983), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sam-wallace-company/1983-02-23-sam-wallace-company-information.pdf; *see also* Criminal Information, United States v. Goodyear Int'l Corp., No. 89-cr-156 (D.D.C. May 11, 1989) (Iraqi Trading Company identified as "instrumentality of the Government of the Republic of Iraq"), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/goodyear/1989-

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05-11-goodyear-information.pdf.

[123] *See* Complaint, *SEC v. ABB*, *supra* note 48; Criminal Information at 3, United States v. ABB Inc., No. 10-cr-664 (S.D. Tex. Sept. 29, 2010), ECF No. 1 [hereinafter *United States v. ABB*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/abb/09-20-10abbinc-info.pdf; Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 27, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.); Ley Del Servicio Publico de Energia Electrica, as amended, art. 1-3, 10, Diario Oficial de la Federación [DO], 22 de Diciembre de 1975 (Mex.).

[124] *See* Indictment at 2, *United States v. Esquenazi*, *supra* note 44, ECF No. 3; Affidavit of Mr. Louis Gary Lissade at 1-9, *id.*, ECF No. 417-2.

[125] Criminal Information at 30-31, *United States v. Alcatel-Lucent France*, *supra* note 56, ECF No. 10.

[126] *Id.*

[127] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366 § 2, 112 Stat. 3302, 3303, 3305, 3308 (1998).

[128] Section 30A(F)(1)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(1)(B); 15 U.S.C. §§ 78dd-2(h)(2)(B), 78dd-3(f)(2)(B).

[129] Third parties and intermediaries themselves are also liable for FCPA violations. Section 30A(a) of the Exchange Act, 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), and 78dd-3(a).

[130] Section 30A(a)(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(3); 15 U.S.C. §§ 78dd-2(a)(3), 78dd-3(a)(3).

[131] *See, e.g.*, Complaint, SEC v. Johnson & Johnson, No. 11-cv-686 (D.D.C. Apr. 8, 2011) [hereinafter *SEC v. Johnson & Johnson*] (bribes paid through Greek and Romanian agents)), *available at* http://www.sec.gov/litigation/complaints/2011/comp21922.pdf; Criminal Information, United States v. DePuy, Inc., No. 11-cr-99 (D.D.C. Apr. 8, 2011), ECF No. 1 [hereinafter *United States v. DePuy*] (bribes paid through Greek agents), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/depuy-inc/04-08-11depuy-info.pdf; Complaint, *SEC v. ABB*, *supra* note 48 (bribes paid through Mexican agents); Criminal Information, *United States v. ABB*, *supra* note 123 (same); Criminal Information, United States v. Int'l Harvester Co., No. 82-cr-244 (S.D. Tex. Nov. 17, 1982) (bribes paid through Mexican agent), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/international-harvester/1982-11-17-international-harvester-information.pdf.

[132] *See* Criminal Information, United States v. Marubeni Corp., No. 12-cr-22 (S.D. Tex. Jan. 17, 2012), ECF No. 1 [hereinafter *United States v. Marubeni*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/marubeni/2012-01-17-marubeni-information.pdf; Criminal Information, *United States v. JGC Corp.*, *supra* note 60, ECF No. 1; Criminal Information, *United States v. Snamprogetti*, *supra* note 60, ECF No. 1; Complaint, SEC v. ENI, S.p.A. and Snamprogetti Netherlands B.V., No. 10-cv-2414 (S.D. Tex. July 7, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-119.pdf; Criminal Information, United States v. Technip S.A., No. 10-cr-439 (S.D. Tex. June 28, 2010), ECF No. 1 [hereinafter *United States v. Technip*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/technip-sa/06-28-10-technip-%20information.pdf; Complaint, SEC v. Technip, No. 10-cv-2289 (S.D. Tex. June 28, 2010), ECF No. 1 [hereinafter *SEC v. Technip*], *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-110.pdf; Indictment, *United States v. Tesler*, *supra* note 50; Complaint, *SEC v. Halliburton and KBR*, *supra* note 90; Criminal Information, *United States v. KBR*, *supra* note 90; Criminal Information, *United States v. Stanley*, No. 08-cr-597 (S.D. Tex. Sept. 3, 2008), ECF No. 1, *available at* http://justice.gov/criminal/fraud/fcpa/cases/stanleya/08-29-08stanley-info.pdf.

[133] *See* Criminal Information, United States v. AGA Medical Corp., No. 08-cr-172, ECF No. 1 (D. Minn. June 3, 2008), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/agamedcorp/06-03-08aga-info.pdf.

[134] Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79; Superseding Criminal Information, *United States v. Naaman*, *supra* note 50, ECF No. 15, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/naamano/06-24-10naaman-supersed-info.pdf; Complaint, *SEC v. Turner*, *supra* note 50.

[135] *See* sources cited *supra* note 68.

[136] *See* sources cited *supra* note 68.

[137] Section 30A(a)(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(3); 15 U.S.C. §§ 78dd-2(a)(3), 78dd-3(a)(3).

[138] *See* Section 30A(f)(2)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(2)(A); 15 U.S.C. §§ 78dd-2(h)(3)(A), 78dd-3(f)(3)(A).

[139] *See* Section 30A(f)(2)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(2)(B); 15 U.S.C. §§ 78dd-2(h)(3)(B), 78dd-3(f)(3)(B). The "knowing" standard was intended to cover "both prohibited actions that are taken with 'actual knowledge' of intended results as well as other actions that, while falling short of what the law terms 'positive knowledge,' nevertheless evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to the high probability of violations of the Act." H.R. Rep. No. 100-576, at 920; *see also* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5003, 102 Stat. 1107, 1423-24 (1988).

[140] H.R. Rep. No. 100-576, at 920 (1988).

[141] Section 30A(c)(1) of the Exchange Act, 15 U.S.C. § 78dd-1(c)(1); 15 U.S.C. §§ 78dd-2(c)(1), 78dd-3(c)(1).

[142] H.R. Rep. No. 100-576, at 922. The conferees also noted that "[i]n interpreting what is 'lawful under the written laws and regulations' . . . the normal rules of legal construction would apply." *Id.*

[143] *See* United States v. Kozeny, 582 F. Supp. 2d 535, 537-40 (S.D.N.Y. 2008). Likewise, the court found that a provision under Azeri law that relieved bribe payors of criminal liability if they were extorted did not make the bribe payments legal. Azeri extortion law precludes the prosecution of the payor of the bribes for the illegal payments, but it does not make the payments legal. *Id.* at 540-41.

[144] Section 30A(c)(2)(A), (B) of the Exchange Act, 15 U.S.C. § 78dd-1(c)(2); 15 U.S.C. §§ 78dd-2(c)(2), 78dd-3(c)(2).

[145] For example, the Eighth Circuit Court of Appeals found that providing airline tickets to a government official in order to corruptly influence that official may form the basis for a violation of the FCPA's anti-bribery provisions. *See Liebo*, 923 F. 2d at 1311-12.

[146] *See generally* U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011) (travel, lodging, and meal expenses of two foreign officials for two-day trip to United States to learn about services of U.S. adoption service provider), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2011/11-01.pdf; U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008) (stipends to reimburse minimal travel expenses of local, government-affiliated journalists attending press conference in foreign country), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2008/0803.pdf; U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007) (domestic travel, lodging, and meal expenses of six foreign officials for six-week educational program), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0702.pdf; U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007) (domestic travel, lodging, and meal expenses of six foreign officials for four-day educational and promotional tour of U.S. company's operations sites), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0701.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004) (travel, lodging, and modest per diem expenses of five foreign officials to participate in nine-day study tour of mutual insurance companies), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0404.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004) (travel, lodging, meal, and insurance expenses for twelve foreign officials and one translator on ten-day trip to three U.S. cities to meet with U.S. public sector officials), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0403.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004) (seminar expenses, including receptions, meals, transportation and lodging costs, for one-and-a-half day comparative law seminar on labor and employment law in foreign country), *available at* http://www.justice.gov/criminal/fraud/fcpa/

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opinion/2004/0401.pdf; U.S. Dept. of Justice, FCPA Op. Release 96-01 (Nov. 25, 1996) (travel, lodging, and meal expenses of regional government representatives to attend training courses in United States), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1996/9601.pdf; U.S. Dept. of Justice, FCPA Op. Release 92-01 (Feb. 1992) (training expenses so that foreign officials could effectively perform duties related to execution and performance of joint-venture agreement, including seminar fees, airfare, lodging, meals, and ground transportation), *available at* http://www.justice.gov/criminal/fraud/fcpa/review/1992/r9201.pdf.

[147] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[148] U.S. Dept. of Justice, FCPA Op. Release 96-01 (Nov. 25, 1996).

[149] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004) .

[150] U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[151] U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[152] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 92-01 (Feb. 1992).

[153] U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[154] *Id.*

[155] *Id.*; U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007).

[156] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[157] U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[158] For example, DOJ has previously approved expenditures on behalf of family members or for entertainment purposes under certain, limited circumstances. *See, e.g.*, U.S. Dept. of Justice, FCPA Rev. P. Release 83-02 (July 26, 1983) (declining to take enforcement action against company seeking to provide promotional tour for foreign official and wife, where both had already planned a trip to the United States at their own expense and company proposed to pay only for all reasonable and necessary actual domestic expenses for the extension of their travel to allow the promotional tour, which would not exceed $5,000), *available at* http://www.justice.gov/criminal/fraud/fcpa/review/1983/r8302.pdf.

[159] Unlike the local law and bona fide expenditures defenses, the facilitating payments exception is not an affirmative defense to the FCPA. Rather, payments of this kind fall outside the scope of the FCPA's bribery prohibition. Prior to 1988, the "facilitating payments" exception was incorporated into the definition of "foreign official," which excluded from the statute's purview officials whose duties were primarily ministerial or clerical. *See* Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, § 104(d)(2), 91 Stat. 1494, 1498 (1977) (providing that the term foreign official "does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical"). The original exception thus focused on the duties of the recipient, rather than the purpose of the payment. In practice, however, it proved difficult to determine whether a foreign official's duties were "ministerial or clerical." S. Rep. No. 100-85, at 53. Responding to criticism that the statutory language "does not clearly reflect Congressional intent and the boundaries of the prohibited conduct," Congress revised the FCPA to define the exception in terms of the purpose of the payment. H. Rep. No. 100-40, pt. 2, at 77. In doing so, Congress reiterated that while its policy to exclude facilitating payments reflected practical considerations of enforcement, "such payments should not be condoned." *Id.* The enacted language reflects this narrow purpose.

[160] In exempting facilitating payments, Congress sought to distinguish them as "payments which merely move a particular matter toward an eventual act or decision or which do not involve any discretionary action," giving the examples of "a gratuity paid to a customs official to speed the processing of a customs document" or "payments made to secure permits, licenses, or the expeditious performance of similar duties of an essentially ministerial or clerical nature which must of necessity be performed in any event." H.R. Rep. No. 95-640, at 8.

[161] Section 30A(f)(3)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(3)(B); 15 U.S.C. §§ 78dd-2(h)(4)(B), 78dd-3(f)(4)(B).

[162] In a 2004 decision, the Fifth Circuit emphasized this precise point, commenting on the limited nature of the facilitating payments exception:

> A brief review of the types of routine governmental actions enumerated by Congress shows how limited Congress wanted to make the grease exceptions. Routine governmental action, for instance, includes "obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country," and "scheduling inspections associated with contract performance or inspections related to transit of goods across country." Therefore, routine governmental action does not include the issuance of *every* official document or *every* inspection, but only (1) documentation that qualifies a party to do business and (2) scheduling an inspection—very narrow categories of largely non-discretionary, ministerial activities performed by mid- or low-level foreign functionaries.

United States v. Kay; 359 F.3d 738, 750-51 (5th Cir. 2004) (internal footnote omitted) (emphasis in original).

[163] Non-Pros. Agreement, In re Helmerich & Payne, Inc. (July 29, 2009) [hereinafter *In re Helmerich & Payne*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/helmerich-payne/06-29-09helmerich-agree.pdf; Admin. Proceeding Order, In the Matter of Helmerich & Payne, Inc., Exchange Act Release No. 60400 (July 30, 2009) [hereinafter *In the Matter of Helmerich & Payne*], *available at* http://www.sec.gov/litigation/admin/2009/34-60400.pdf.

[164] Criminal Information, Vetco Gray Controls Inc., *et al.*, No. 07-cr-4 No. (S.D. Tex. Jan. 5, 2007), ECF Nos. 1-2, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/vetco-controls/02-06-07vetcogray-info.pdf.

[165] Complaint, SEC v. Noble Corp., No. 10-cv-4336 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21728.pdf; Non-Pros. Agreement, In re Noble Corp. (Nov. 4, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/noble-corp/11-04-10noble-corp-npa.pdf; *see also sources cited supra* note 68.

[166] Working Group on Bribery, *2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, at § VI (recommending countries should periodically review their policies and approach to facilitation payments and should encourage companies to prohibit or discourage facilitation payments "in view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law"); Working Group on Bribery, *United States: Phase 3*, at 24 (Oct. 15, 2010), *available at* http://www.oecd.org/dataoecd/10/49/46213841.pdf (commending United States for steps taken in line with 2009 recommendation to encourage companies to prohibit or discourage facilitation payments).

[167] Facilitating payments are illegal under the U.K. Bribery Act 2010, which came into force on July 1, 2011, and were also illegal under prior U.K. legislation. *See* Bribery Act 2010, c.23 (Eng.), *available at* http://www.legislation.gov.uk/ukpga/2010/23/contents; *see also* U.K. Ministry of Justice, *The Bribery Act 2010: Guidance About Procedures Which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010)*, at 18 (2011), *available at* http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf.

[168] *See, e.g.*, Non-Pros. Agreement, *In re Helmerich & Payne*, *supra* note 163; Admin. Proceeding Order, *In the Matter of Helmerich & Payne*, *supra* note 163.

[169] In order to establish duress or coercion, a defendant must demonstrate that the defendant was under unlawful, present, immediate, and

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impending threat of death or serious bodily injury; that the defendant did not negligently or recklessly create a situation where he would be forced to engage in criminal conduct (e.g., had been making payments as part of an ongoing bribery scheme); that the defendant had no reasonable legal alternative to violating the law; and that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. *See* Eleventh Circuit Pattern Jury Instr., Special Instr. No. 16 (2003); *see also* Fifth Circuit Pattern Jury Instr. No. 1.36 (2001); Sixth Circuit Pattern Jury Instr. No. 6.05 (2010); Seventh Circuit Pattern Jury Instr. No. 6.08 (1998); Ninth Circuit Pattern Jury Instr. No. 6.5 (2010); 1A Kevin F. O'Malley, Jay E. Grenig, Hon. William C. Lee, *Federal Jury Practice and Instructions* § 19.02 (6th ed. 2008 & Supp. 2012).

[170] S. Rep. No. 95-114, at 11.

[171] *Id*. at 10.

[172] *Id*. at 11.

[173] United States v. Kozeny, 582 F. Supp. 2d 535, 540 n.31 (S.D.N.Y. 2008).

[174] *Kozeny*, 582 F. Supp. 2d at 540 (citing S. Rep. No. 95-114, at 10-11).

[175] *Id.*

[176] These payments, however, must be accurately reflected in the company's books and records so that the company and its management are aware of the payments and can assure that the payments were properly made under the circumstances. For example, in one instance, a Kazakh immigration prosecutor threatened to fine, jail, or deport employees of a U.S. company's subsidiary. Believing the threats to be genuine, the employees in Kazakhstan sought guidance from senior management of the U.S. subsidiary and were authorized to make the payments. The employees then paid the government official a total of $45,000 using personal funds. The subsidiary reimbursed the employees, but it falsely recorded the reimbursements as "salary advances" or "visa fines." The parent company, which eventually discovered these payments, as well as other improperly booked cash payments made to a Kazakhstani consultant to obtain visas, was charged with civil violations of the accounting provisions. Admin. Proceeding Order, In the Matter of NATCO Group Inc., Exchange Act Release No. 61325 (Jan. 11, 2010), *available at* http://www.sec.gov/litigation/admin/2010/34-61325.pdf (imposing cease-and-desist order and $65,000 civil monetary penalty).

[177] *See* Jury Instructions at 21, United States v. Aguilar, No. 10-cr-1031 (C.D. Cal. May 16, 2011), ECF No. 511.

[178] *See, e.g.*, Pacific Can Co. v. Hewes, 95 F.2d 42, 46 (9th Cir. 1938) ("Where one corporation is controlled by another, the former acts not for itself but as directed by the latter, the same as an agent, and the principal is liable for the acts of its agent within the scope of the agent's authority."); United States v. NYNEX Corp., 788 F. Supp. 16, 18 n.3 (D.D.C. 1992) (holding that "[a] corporation can of course be held criminally liable for the acts of its agents," including "the conduct of its subsidiaries.").

[179] *Pacific Can Co*., 95 F.2d at 46; *NYNEX Corp*., 788 F. Supp. at 18 n.3.

[180] *See, e.g.*, Standard Oil Co. v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

[181] Admin. Proceeding Order, In the Matter of United Industrial Corp., Exchange Act Release No. 60005 (May 29, 2009), *available at* http://www.sec.gov/litigation/admin/2009/34-60005.pdf; *see also* Lit. Release No. 21063, *SEC v. Worzel* (May 29, 2009), *available at* http://www.sec.gov/litigation/litreleases/2009/lr21063.htm.

[182] *See, e.g.*, Philip Urofksy, *What You Don't Know Can Hurt You: Successor Liability Resulting From Inadequate FCPA Due Diligence in M&A Transactions*, 1763 PLI/Corp. 631, 637 (2009) ("As a legal matter, when one corporation acquires another, it assumes any existing liabilities of that corporation, including liability for unlawful payments, regardless of whether it knows of them."). Whether or not successor liability applies to a particular corporate transaction depends on the facts involved and state, federal, and, potentially, foreign law.

[183] *See, e.g.*, Carolyn Lindsey, *More Than You Bargained for: Successor Liability Under the U.S. Foreign Corrupt Practices Act*, 35 Ohio N.U. L. Rev. 959, 966 (2009) ("Allowing a company to escape its debts and liabilities by merging with another entity is considered to lead to an unjust result.").

[184] *See, e.g.*, Melrose Distillers, Inc. v. United States, 359 U.S. 271, 274 (1959) (affirming criminal successor liability for antitrust violations); United States v. Alamo Bank of Texas, 880 F.2d 828, 830 (5th Cir. 1989) (affirming criminal successor liability for Bank Secrecy Act violations); United States v. Polizzi, 500 F.2d 856, 907 (9th Cir. 1974) (affirming criminal successor liability for conspiracy and Travel Act violations); United States v. Shields Rubber Corp., 732 F. Supp. 569, 571-72 (W.D. Pa. 1989) (permitting criminal successor liability for customs violations); *see also* United States v. Mobile Materials, Inc., 776 F.2d 1476, 1477 (10th Cir. 1985) (allowing criminal post-dissolution liability for antitrust, mail fraud, and false statement violations);.

[185] Complaint, SEC v. The Titan Corp., No. 05-cv-411 (D.D.C. Mar. 1, 2005) (discovery of FCPA violations during pre-acquisition due diligence protected potential acquiring company and led to termination of merger agreement), *available at* http://www.sec.gov/litigation/complaints/comp19107.pdf; Criminal Information, United States v. Titan Corp., No. 05-cr-314 (S.D. Cal. Mar. 1, 2005) (same) [hereinafter *United States v. Titan Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/titan-corp/03-01-05titan-info.pdf.

[186] For a discussion of declinations, see Chapter 7.

[187] *See* Complaint, SEC v. El Paso Corp., No. 07-cv-899 (S.D.N.Y. Feb. 7, 2007), ECF No. 1 [hereinafter *SEC v. El Paso Corp.*] (charging company with books and records and internal controls charges for improper payments to Iraq under UN. Oil-for-Food Programme), *available at* http://www.sec.gov/litigation/complaints/2007/comp19991.pdf.

[188] Complaint, SEC v. Alliance One Int'l, Inc., No. 10-cv-1319 (D.D.C. Aug. 6, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21618-alliance-one.pdf; Non-Pros. Agreement, In re Alliance One Int'l, Inc. (Aug. 6, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-npa.pdf; Criminal Information, United States v. Alliance One Int'l AG, No. 10-cr-17 (W.D. Va. Aug. 6, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-info.pdf; Criminal Information, United States v. Alliance One Tobacco Osh, LLC, No. 10-cr-16 (W.D. Va. Aug. 6, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-tobaccoinfo.pdf.

[189] *See* Criminal Information, United States v. Syncor Taiwan, Inc., No. 02-cr-1244 (C.D. Cal. Dec. 5, 2002), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/syncor-taiwan/12-05-02syncor-taiwan-info.pdf; Plea Agreement, United States v. Syncor Taiwan, Inc., No. 02-cr-1244 (C.D. Cal. Dec. 9, 2002), ECF No. 14, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/syncor-taiwan/12-03-02syncor-taiwan-plea-agree.pdf.

[190] *See* Complaint, SEC v. Syncor Int'l Corp., No. 02-cv-2421 (D.D.C. Dec. 10, 2002), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp17887.htm; SEC v. Syncor International Corp., SEC Lit. Rel. 17997, (Dec. 10, 2002), *available at* http://www.sec.gov/litigation/litreleases/lr17887.htm.

[191] *See* Complaint, *SEC v. York Int'l Corp*., *supra* note 115; Criminal Information, *United States v. York Int'l Corp*., *supra* note 115.

[192] *See* Criminal Information, United States v. Latin Node, Inc., No. 09-cr-20239 (S.D. Fla. Mar. 23, 2009), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/litton-applied/03-23-09latinnode-info.pdf; eLandia Int'l Inc., Annual Report (Form 10-K), at 20 (Apr. 2, 2009), *available at* http://www.sec.gov/Archives/edgar/data/1352819/000119312509070961/d10k.htm.

[193] *See* Criminal Information, United States v. Salvoch, No. 10-cr-20893 (S.D. Fla. Dec. 17, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/salvoch/12-17-10salvoch-info.pdf; Criminal Information, United States v. Vasquez, No. 10-cr-20894 (S.D. Fla. Dec. 17, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/vasquezjp/12-17-10vasquez-juan-info.pdf; Indictment, United States v. Granados, *et al*., No. 10-cr-20881, (S.D.

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Fla. Dec. 14, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/granados-jorge/12-21-10granados-indict.pdf.
[194] *See* Deferred Pros. Agreement, *United States v. Snamprogetti*, *supra* note 60, ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/snamprogetti/07-07-10snamprogetti-dpa.pdf.
[195] *Compare* Criminal Information, *United States v. Snamprogetti*, *supra* note 60, *with* Deferred Pros. Agreement, *United States v. Snamprogetti*, *supra* note 60, ECF No. 3.
[196] *See* Press Release, General Electric Co., General Electric Agrees to Acquire InVision (Mar. 15, 2004), *available at* http://www.ge.com/files/usa/company/investor/downloads/sharpeye_press_release.pdf; Press Release, U.S. Dept. of Justice, InVision Tech. Inc. Enters into Agreement with the United States (Dec. 6, 2004), *available at* http://www.justice.gov/opa/pr/2004/December/04_crm_780.htm; Company News; *G.E. Gets InVision, a Maker of Bomb Detectors*, N.Y. Times, Dec. 7, 2004, at C4.
[197] Non-Pros. Agreement, In re InVision (Dec. 3, 2004), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/invision-tech/12-03-04invisiontech-agree.pdf; Non-Pros. Agreement, In re General Elec. Co., (Dec. 3, 2004), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/invision-tech/12-03-04invisiontech-agree-ge.pdf; Complaint, SEC v. GE InVision, Inc., f/k/a InVision Technologies, Inc., No. 05-cv-660, (N.D. Cal. Feb. 14, 2005), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp19078.pdf.
[198] *See* U.S. Dept. of Justice, FCPA Op. Release 08-02 (June 13, 2008), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2008/0802.pdf; *see also* Press Release, U.S. Dept. of Justice, Pfizer H.C.P. Corp. Agrees to Pay $15 Million Penalty to Resolve Foreign Bribery Investigation (Aug. 7, 2012) ("In the 18 months following its acquisition of Wyeth, Pfizer Inc., in consultation with the department, conducted a due diligence and investigative review of the Wyeth business operations and integrated Pfizer Inc.'s internal controls system into the former Wyeth business entities. The department considered these extensive efforts and the SEC resolution in its determination not to pursue a criminal resolution for the pre-acquisition improper conduct of Wyeth subsidiaries."), *available at* http://www.justice.gov/opa/pr/2012/August/12-crm-980.html.
[199] 18 U.S.C. § 2.
[200] In enacting the FCPA in 1977, Congress explicitly noted that "[t]he concepts of aiding and abetting and joint participation would apply to a violation under this bill in the same manner in which those concepts have always applied in both SEC civil actions and in implied private actions brought under the securities laws generally." H.R. Rep. No. 95-640, at 8.
[201] *Pinkerton* held that a conspirator may be found guilty of a substantive offense committed by a co-conspirator in furtherance of the conspiracy if the co-conspirator's acts were reasonably foreseeable. *See* Pinkerton v. United States, 328 U.S. 640, 647-48 (1946).
[202] *See* United States v. MacAllister, 160 F.3d 1304, 1307 (11th Cir. 1998); United States v. Winter, 509 F.2d 975, 982 (5th Cir. 1975).
[203] *See* Criminal Information, *United States v. Marubeni*, *supra* note 132; Criminal Information, *United States v. JGC Corp.*, *supra* note 60; Criminal Information, *United States v. Snamprogetti*, *supra* note 60; *see also* Criminal Information, *United States v. Technip*, *supra* note 132.
[204] Section 20(e) of the Exchange Act, "Prosecution of Persons Who Aid and Abet Violations," explicitly provides that, for purposes of a civil action seeking injunctive relief or a civil penalty, "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided." Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).
[205] Under Section 21C(a) of the Exchange Act, the SEC may impose a cease-and-desist order through the SEC's administrative proceedings upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation. Section 21C(a) of the Exchange Act,15 U.S.C. § 78u-3(a).
[206] *See* Complaint, *SEC v. Panalpina, Inc.*, *supra* note 68.
[207] 18 U.S.C. § 3282(a) provides: "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."
[208] *See* Grunewald v. United States, 353 U.S. 391, 396-97 (1957) (holding government must prove conspiracy still existed and at least one overt act was committed within the statute of limitations); Fiswick v. United States, 329 U.S. 211, 216 (1946) ("The statute of limitations, unless suspended, runs from the last overt act during the existence of the conspiracy. The overt acts averred and proved may thus mark the duration, as well as the scope, of the conspiracy.") (citation omitted); *see generally* Julie N. Sarnoff, *Federal Criminal Conspiracy*, 48 Am. Crim. L. Rev. 663, 676 (Spring 2011).
[209] 18 U.S.C. § 3292.
[210] 28 U.S.C. § 2462.
[211] S. Rep. No. 95-114, at 3 (noting that, in the past, "corporate bribery has been concealed by the falsification of corporate books and records," that the accounting provisions "remove [] this avenue of coverup," and that "[t]aken together, the accounting requirements and criminal [anti-bribery] prohibitions . . . should effectively deter corporate bribery of foreign government officials").
[212] S. Rep. No. 95-114, at 7.
[213] Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).
[214] Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).
[215] The accounting provisions contain a narrow exemption related to national security and the protection of classified information. Under this "national security" provision, "no duty or liability [under Section 13(b)(2) of the Exchange Act] shall be imposed upon any person acting in cooperation with the head of any federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives." Section 13(b)(3) of the Exchange Act, 15 U.S.C. § 78m(b)(3). As Congress made clear, however, the exception is narrowly tailored and intended to prevent the disclosure of classified information. H.R. Rep. 94-831, at 11, *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/corruptrpt-94-831.pdf.
[216] Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).
[217] H.R. Rep. No. 94-831, at 10.
[218] *Id.*
[219] Section 13(b)(7) of the Exchange Act, 15 U.S.C. § 78m(b)(7).
[220] H.R. Rep. No. 100-576, at 917 (1988), *available athttp://www.justice.gov/criminal/fraud/fcpa/history/1988/tradeact-100-418.pdf.* Congress rejected the addition of proposed cost-benefit language to the definition "in response to concerns that such a statutory provision might be abused and weaken the accounting provisions at a time of increasing concern about audit failures and financial fraud and resultant recommendations by experts for stronger accounting practices and audit standards." *Id.*
[221] *See, e.g.*, Complaint, SEC v. Biomet, Inc., No. 12-cv-454 (D.D.C. Mar. 26, 2012), ECF No. 1 [hereinafter *SEC v. Biomet*], *available at* http://www.sec.gov/litigation/complaints/2012/comp22306.pdf; Criminal Information, United States v. Biomet, Inc., No. 12-cr-80 (D.D.C. Mar. 26, 2012) [hereinafter *United States v. Biomet*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/biomet/2012-03-26-biomet-information.pdf; Complaint, SEC v. Smith & Nephew Inc., No. 12-cv-187 (D.D.C. Feb. 6, 2012), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2012/comp22252.pdf; Criminal Information, United States v. Smith & Nephew plc., No. 12-cr-30 (D.D.C. Feb. 6, 2012), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/smith-nephew/2012-02-06-s-n-information.pdf; Complaint, *SEC v. Johnson & Johnson*, *supra* note 131; Criminal Information, *United States v. DePuy*, *supra* note 131; Complaint, SEC v. Maxwell Technologies Inc., No. 11-cv-258 (D.D.C. Jan. 31, 2011), ECF No. 1 [hereinafter *SEC v. Maxwell Technologies*], *available at* http://www.sec.gov/litigation/complaints/2011/comp21832.pdf; Criminal Information, United States v. Maxwell Technologies Inc., No. 11-cr-329 (S.D. Cal. Jan. 31, 2011), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/maxwell/01-31-11maxwell-tech-info.pdf; Complaint, SEC v. Transocean, Inc., No. 10-cv-1891 (D.D.C. Nov. 4, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21725.pdf; Criminal Information, United States v. Transocean, Inc., No. 10-cr-768 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/transocean-inc/11-04-10transocean-info.pdf.

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[222] S. Rep. No. 95-114, at 7.
[223] Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).
[224] Section 13(b)(7) of the Exchange Act, 15 U.S.C. § 78m(b)(7).
[225] *See* Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48.
[226] Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48; Press Release, U.S. Dept. of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay $450 Million in Combined Criminal Fines (Dec. 15, 2008), *available at* http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html.
[227] *See, e.g.*, Complaint, *SEC v. Biomet*, *supra* note 221 (bribes paid to government healthcare providers in which phony invoices were used to justify payments and bribes were falsely recorded as "consulting fees" or "commissions" in company's books and records); Criminal Information, *United States v. Biomet*, *supra* note 221 (same); *SEC v. Alcatel-Lucent*, *supra* note 48 (bribes paid to foreign officials to secure telecommunications contracts where company lacked proper internal controls and permitted books and records to falsified); *United States v. Alcatel-Lucent, S.A.*, *supra* note 48 (same).
[228] Complaint, *SEC v. Daimler AG*, *supra* note 48; Criminal Information, *United States v. Daimler AG*, *supra* note 48.
[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*
[234] *See, e.g.*, Complaint, *SEC v. Tyco Int'l*, *supra* note 9; Complaint, SEC v. Willbros, No. 08-cv-1494 (S.D. Tex. May 14, 2008), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2008/comp20571.pdf.
[235] *See, e.g.*, Complaint, *SEC v. Siemens AG*, *supra* note 48; Complaint, *SEC v. York Int'l Corp.*, *supra* note 115; Complaint, *SEC v. Textron*, *supra* note 115; Criminal Information, United States v. Control Components, Inc., No. 09-cr-162 (C.D. Cal. July 22, 2009), ECF No. 1 [hereinafter *United States v. Control Components*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/control-inc/07-22-09cci-info.pdf; Criminal Information, United States v. SSI Int'l Far East, Ltd., No. 06-cr-398, ECF No. 1 (D. Or. Oct. 10, 2006) [hereinafter *United States v. SSI Int'l*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ssi-intl/10-10-06ssi-information.pdf.
[236] *See, e.g.*, Complaint, *SEC v. El Paso Corp.*, *supra* note 187; Complaint, *SEC v. Innospec*, *supra* note 79; Complaint, SEC v. Chevron Corp., 07-cv-10299 (S.D.N.Y. Nov. 14, 2007), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2007/comp20363.pdf.
[237] Plea Agreement, *United States v. Stanley*, *supra* note 8; Plea Agreement, *United States v. Sapsizian*, *supra* note 8.
[238] *See* Complaint, *SEC v. Maxwell Technologies*, *supra* note 221.
[239] *See* Complaint, *SEC v. Willbros Group*, *supra* note 9.
[240] 15 U.S.C. § 7201, *et seq*.
[241] Exchange Act Rule 13a-15, 17 C.F.R. § 240.13a-15; Exchange Act Rule 15d-15, 17 C.F.R. § 240.15d-15; Item 308 of Regulation S-K, 17 C.F.R. § 229.308; Item 15, Form 20-F, *available at* http://www.sec.gov/about/forms/form20-f.pdf; General Instruction (B), Form 40-F (for foreign private issuers), *available at* http://www.sec.gov/about/forms/form40-f.pdf.
[242] *See* U.S. Sec. and Exchange Comm., Commission Guidance Regarding Management's Report on Internal Control over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33-8810 (June 27, 2007), *available at* http://www.sec.gov/rules/interp/2007/33-8810.pdf.
[243] *Id.*
[244] Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, § 102, 91 Stat. 1494 (1977).
[245] *See supra* note 48; *SEC v. Technip*, *supra* note 132, (French company); *United States v. Technip*, *supra* note 132, (same); *see also* Admin. Proceeding Order, In re Diageo plc, Exchange Act Release No. 64978 (SEC July 27, 2011) (UK company), *available at* http://www.sec.gov/litigation/admin/2011/34-64978.pdf; Admin. Proceeding Order, In re Statoil, ASA, Exchange Act Release No. 54599 (SEC May 29, 2009) (Norwegian company), *available at* http://www.sec.gov/litigation/admin/2006/34-54599.pdf; Criminal Information, United States v. Statoil, ASA, No. 06-cr-960 (S.D.N.Y. Oct. 13, 2006) (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/statoil-asa-inc/10-13-09statoil-information.pdf.
[246] Although private companies are not covered by the books and records and internal controls provisions of the FCPA and do not fall within SEC's jurisdiction, such companies generally are required by federal and state tax laws and state corporation laws to maintain accurate books and records sufficient to properly calculate taxes owed. Further, most large private companies maintain their books and records to facilitate the preparation of financial statements in conformity with GAAP to comply with financial institutions' lending requirements.
[247] *See SEC v. RAE Sys. Inc.*, *supra* note 92; *In re RAE Sys. Inc.*, *supra* note 92.
[248] *See* Section 13(b)(6) of the Exchange Act, 15 U.S.C. § 78m(b) (6), which provides that where an issuer "holds 50 per centum or less of the voting power with respect to a domestic or foreign firm," the issuer must "proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with [Section 13(b)(2)]."
[249] *See* 15 U.S.C. § 78m(b)(6). Congress added the language in subsection 78m(b)(6) to the FCPA in 1988, recognizing that "it is unrealistic to expect a minority owner to exert a disproportionate degree of influence over the accounting practices of a subsidiary." H.R. Rep. No. 100-576, at 917. The Conference Report noted that, with respect to minority owners, "the amount of influence which an issuer may exercise necessarily varies from case to case. While the relative degree of ownership is obviously one factor, other factors may also be important in determining whether an issuer has demonstrated good-faith efforts to use its influence." *Id.*; *see also* S. Rep. No. 100-85, at 50.
[250] Section 20(e) of the Exchange Act, titled "Prosecution of Persons Who Aid and Abet Violations," explicitly provides that for purposes of a civil action seeking injunctive relief or a civil penalty, "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided." *See* Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).
[251] *See* Complaint at 11-12, *SEC v. Elkin*, *supra* note 50, ECF 1.
[252] *SEC v. Elkin*, *supra* note 50, ECF 6-9 (final judgments).
[253] *See, e.g.*, Complaint, SEC v. Nature's Sunshine Products, Inc., *et al.*, No. 09-cv-672 (D. Utah, July 31, 2009), ECF No. 2, *available at* http://www.sec.gov/litigation/litreleases/2009/lr21162.htm.
[254] *See* Admin. Proceeding Order, In re Watts Water Technologies, Inc. and Leesen Chang, Exchange Act Release No. 65555 (SEC Oct. 13, 2011), *available at* http://www.sec.gov/litigation/admin/2011/34-65555.pdf.
[255] *Id.* at 2, 4, 6-7.
[256] Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1.
[257] 15 U.S.C. § 78m(b)(5).
[258] Section 3(a)(9) of the Exchange Act, 15 U.S.C. § 78c(a)(9).
[259] Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2
[260] Complaint, SEC v. Jennings, No. 11-cv-1444 (D.D.C. Jan. 24, 2011), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2011/comp21822.pdf.
[261] Complaint, *id.*, ECF No. 1; Final Judgment, *id.*, ECF No. 3.
[262] Serious Fraud Office, Innospec Ltd: Former CEO admits bribery to falsify product tests (July 30, 2012), *available at* http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd--former-ceo-admits-bribery-to-falsify-product-tests.aspx.
[263] 15 U.S.C. § 78m(b)(4)-(5). Congress adopted this language in 1988 in

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order to make clear that, consistent with enforcement policy at the time, criminal penalties would not be imposed "for inadvertent or insignificant errors in books and records, or inadvertent violations of accounting controls." *See* S. Rep. No. 100-85, at 49; H.R. Rep. No. 100-576, at 916 ("The Conferees intend to codify current Securities and Exchange Commission (SEC) enforcement policy that penalties not be imposed for insignificant or technical infractions or inadvertent conduct.").

[264] 15 U.S.C. § 78ff(a).

[265] *See United States v. Alcatel-Lucent, S.A.*, *supra* note 48; *see also United States v. Alcatel-Lucent France*, *supra* note 56.

[266] *See* Deferred Prosecution Agreement, *United States v. Alcatel-Lucent, S.A.*, *supra* note 48, ECF No. 10, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-etal/02-22-11alcatel-dpa.pdf.

[267] *See* Plea Agreement, *United States v. Siemens AG*, *supra* note 48, ECF No. 14, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-15-08siemensakt-plea.pdf.

[268] *See* Minute Entry of Guilty Plea, *United States v. Peterson*, *supra* note 8, ECF 13; *see also* Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 23, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html.

[269] *See* Criminal Information, United States v. Baker Hughes Svcs. Int'l, No. 07-cr-129 (S.D. Tex. Apr. 11, 2007), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/baker-hughs/04-11-07bakerhughesintl-info.pdf.

[270] *See United States v. Panalpina, Inc.*, *supra* note 68.

[271] *Id.*

[272] *See* FASB Statement of Financial Accounting Concepts No. 2, ¶¶ 63-80.

[273] PCAOB Auditing Standard No. 12 and PCAOB AU Section 325.

[274] *See* Section 10A of the Exchange Act, 15U.S.C. § 78j-1.

[275] 18 U.S.C. § 1952.

[276] *See, e.g.*, *United States v. Nexus Technologies*, *supra* note 53; Criminal Information, United States v. Robert Richard King, *et al.*, No. 01-cr-190 (W.D. Mo. June 27, 2001), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kingr-etal/05-03-02king-robert-indict.pdf; Superseding Indictment, *United States v. Mead*, *supra* note 44; Criminal Information, United States v. Saybolt North America Inc., *et al.*, No. 98-cr-10266 (D. Mass. Aug. 18, 1998), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/saybolt/08-10-98saybolt-info.pdf.

[277] *See* Second Superseding Indictment, United States v. Kozeny, No. 05-cr-518 (S.D.N.Y. May 26, 2009), ECF No. 203, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kozenyv/05-26-09bourke2nd-supersed-indict.pdf; Judgment, United States v. Bourke, No. 05-cr-518 (S.D.N.Y. Nov. 12, 2009), ECF No. 253, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kozenyv/11-12-09bourke-judgment.pdf.

[278] Plea Agreement, *United States v. Control Components*, *supra* note 235, ECF No. 7; *see also* Order, *United States v. Carson*, *supra* note 119, ECF No. 440 (denying motion to dismiss counts alleging Travel Act violations), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/carsons/2011-09-20-carson-minutes-denying-motion-to-dismiss.pdf.

[279] *See, e.g.*, Criminal Information, *United States v. Esquenazi*, *supra* note 44; Criminal Information, *United States v. Green*, *supra* note 44; Criminal Information, United States v. General Elec. Co., No. 92-cr-87 (S.D. Ohio July 22, 1992), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/general-electric/1992-07-22-general-electric-information.pdf.

[280] Foreign officials may "not be charged with violating the FCPA itself, since the [FCPA] does not criminalize the receipt of a bribe by a foreign official." United States v. Blondek, 741 F.Supp. 116, 117 (N.D. Tex. 1990), *aff'd* United States v. Castle, 925 F.2d 831 (5th Cir. 1991) ("We hold that foreign officials may not be prosecuted under 18 U.S.C. § 371 for conspiring to violate the FCPA."). Foreign officials, however, can be charged with violating the FCPA when the foreign official acts as an intermediary of a bribe payment. *See, e.g.*, Information, United States v. Basu, No. 02-cr-475 (D.D.C. Nov. 26, 2002) (World Bank employee charged with wire fraud and FCPA violations for facilitating bribe payments to another World Bank official and Kenyan government official), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/basu/11-26-02basu-info.pdf; Information, United States v. Sengupta, No. 02-cr-40 (D.D.C. Jan. 30, 2002), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sengupta/01-30-02sengupta-info.pdf.

[281] *See, e.g.*, Judgments, *United States v. Esquenazi*, *supra* note 44, ECF Nos. 182, 816, 824 (judgments against foreign official defendants).

[282] Criminal Information, *United States v. SSI Int'l*, *supra* note 235 (alleging violations of 18 U.S.C. §§ 1343, 1346); Plea Agreement, *United States v. SSI Int'l*, *supra* note 235, (Oct. 10, 2006), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/control-inc/07-24-09cci-plea-agree.pdf.

[283] *See* Ex-Im Bank, Form of Exporter's Certificate, EBD-M-56 (Jan. 2007), *available at* http://www.exim.gov/pub/ins/pdf/ebd-m-56.pdf.

[284] *See* 18 U.S.C. § 1001.

[285] 22 C.F.R. §§ 130.2, 130.9.

[286] For example, in *United States v. BAE Systems plc*, BAE pleaded guilty to conspiring to defraud the United States by impairing and impeding its lawful functions, to making false statements about its FCPA compliance program, and to violating the AECA and ITAR. BAE paid a $400 million fine and agreed to an independent corporate monitor to ensure compliance with applicable anti-corruption and export control laws. Criminal Information and Plea Agreement, United States v. BAE Sys. plc, No. 10-cr-35 (D.D.C. Mar. 1, 2010), ECF Nos.1, 8, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf and http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/03-01-10baesystems-plea-agree.pdf. In an action based on the same underlying facts as the criminal guilty plea, BAE entered a civil settlement with the Directorate of Defense Trade Controls for violations of AECA and ITAR, including over 2500 ITAR violations that included a failure to report the payment of fees or commissions associated with defense transactions and failure to maintain records involving ITAR-controlled transactions. BAE paid $79 million in penalties, and the State Department imposed a "policy of denial" for export licenses on three BAE subsidiaries involved in the wrongful conduct. Consent Agreement between BAE Sys. plc and Defense Trade Controls at 17-20, Bureau of Political-Military Affairs, U.S. Dept. of State (May 16, 2011), *available at* http://www.pmddtc.state.gov/compliance/consent_agreements/pdf/BAES_CA.pdf; Proposed Charging Letter, In re Investigation of BAE Systems plc Regarding Violations of the Arms Export Control Act and the International Traffic in Arms Regulations, U.S. Dept. of State (May 2011), *available at* http://www.pmddtc.state.gov/compliance/consent_agreements/pdf/BAES_PCL.pdf.

[287] 26 U.S.C. § 162(c)(1); *see also* Plea Agreement, United States v. Smith, No. 07-cr-69 (C.D. Cal. Sept. 3, 2009), ECF No. 89, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/smithl/09-03-09smithl-plea-agree.pdf; Criminal Information, *United States v. Titan Corp.*, *supra* note 185.

[288] *See* USAM § 9-27.000.

[289] *See* USAM § 9-27.420 (setting forth considerations to be weighed when determining whether it would be appropriate to enter into plea agreement).

[290] *See* USAM § 9-28.000 *et seq.*

[291] *See* USAM § 9-28.710 (discussing attorney-client and work product protections).

[292] *See* http://www.sec.gov/divisions/enforce/enforcementmanual.pdf.

[293] *See* USAM§ 9-28.300.A; *see also* USAM § 9-28.700.B (explaining benefits of cooperation for both government and corporation).

[294] *See* USAM § 9-28.900 (discussing restitution and remediation). The commentary further provides that prosecutors should consider and weigh whether the corporation appropriately disciplined wrongdoers and a corporation's efforts to reform, including its quick recognition of the flaws in the program and its efforts to improve the program. *Id.*

[295] *See* USAM §§ 9-27.230, 9-27.420.

[296] U.S. Sentencing Guidelines § 8B2.1(b)(7) (2011).

[297] *Id.* § 8C2.5(f)(2) (2011).

[298] U.S. Sec. and Exchange Comm., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, SEC Rel. Nos. 34-44969 and AAER-1470 (Oct. 23, 2001) [hereinafter *Seaboard* Report] *available at* http://www.sec.gov/litigation/investreport/34-44969.htm.

[299] U.S. Sec. and Exchange Comm., Policy Statement Concerning Cooperation by Individuals in its Investigations and Related Enforcements Actions, 17 C.F.R. § 202.12 (Jan. 10, 2010), *available at* http://www.sec.gov/rules/

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policy/2010/34-61340.pdf.

[300] *See* U.S. Sentencing Guidelines at § 8B2.1(a)(2).

[301] U.S. Sentencing Guidelines § 8B2.1(b).

[302] *See generally* Debbie Troklus, *et al.*, Compliance 101: How to build and maintain an effective compliance and ethics program, Society of Corp. Compliance and Ethics (2008) 3-9 [hereinafter Compliance 101] (listing reasons to implement compliance program, including protecting company's reputation, creating trust between management and employees, preventing false statements to customers, creating efficiencies and streamlining processes, detecting employee and contractor fraud and abuse, ensuring high-quality products and services, and providing "early warning" system of inappropriate actions); Transparency Int'l, Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition 5 (2008) (citing benefits of anti-bribery program like protecting reputation, creating record of integrity enhances opportunities to acquire government business, protecting company assets otherwise squandered on bribes); Mark Pieth, Harmonising Anti-Corruption Compliance: The OECD Good Practice Guidance 45-46 (2011) [hereinafter Harmonising Anti-Corruption Compliance] (citing need for compliance program to prevent and detect in-house risks, such as workplace security or conflicts of interest, and external risks, like anti-trust violations, embargo circumvention, environmental hazards, and money laundering).

[303] Debarment authorities, such as the Department of Defense or the General Services Administration, may also consider a company's compliance program when deciding whether to debar or suspend a contractor. Specifically, the relevant regulations provide that the debarment authority should consider "[w]hether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment," and "[w]hether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs." 48 C.F.R. § 9.406-1(a).

[304] *Seaboard* Report, *supra* note 298; U.S. Sec. and Exchange Comm., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, SEC Rel. No. 44969 (Oct. 23, 2001), *available at* http://www.sec.gov/litigation/investreport/34-44969.htm.

[305] USAM § 9-28.300. When evaluating the pervasiveness of wrongdoing within the corporation, prosecutors are advised that while it may be appropriate to charge a corporation for minor misconduct where the wrongdoing was pervasive, "it may not be appropriate to impose liability upon a corporation, *particularly one with a robust compliance program in place*, under a strict *respondeat superior* theory for the single isolated act of a rogue employee." *Id.* § 9-28.500.A (emphasis added). Prosecutors should also consider a company's compliance program when examining any remedial actions taken, including efforts to implement an effective compliance program or to improve an existing one. As the commentary explains, "although the inadequacy of a corporate compliance program is a factor to consider when deciding whether to charge a corporation, that corporation's quick recognition of the flaws in the program and its efforts to improve the program are also factors to consider as to appropriate disposition of a case." *Id.* § 9-28.900.B. Finally, the Principles of Federal Prosecution of Business Organizations provides that prosecutors should consider the existence and effectiveness of the corporation's pre-existing compliance program in determining how to treat a corporate target. *Id.* § 9-28.800.

[306] *See* USAM § 9-28.800.B; *see also* U.S. Sentencing Guidelines § 8B2.1(a) (2011) ("The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.").

[307] *See* Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012) (declining to bring criminal case against corporate employer that "had constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials"), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html; Press Release, U.S. Sec. and Exchange Comm., SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud, No. 2012-78 (Apr. 25, 2012) (indicating corporate employer was not charged in the matter and had "cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved"), *available at* http://www.sec.gov/news/press/2012/2012-78.htm.

[308] *See* USAM § 9-28.800.B.

[309] *See, e.g.*, Int'l Chamber of Commerce, ICC Rules on Combating Corruption (2011) [hereinafter ICC Rules on Combating Corruption], *available at* http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf; Transparency Int'l, Business Principles for Countering Bribery (2d ed. 2009) [hereinafter Business Principles for Countering Bribery], *available at* http://www.transparency.org/global_priorities/private_sector/business_principles/; United Kingdom Ministry of Justice, The Bribery Act of 2010, Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (2010), *available at* http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf; World Bank Group, Integrity Compliance Guidelines (2011) [hereinafter Integrity Compliance Guidelines], *available at* http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf; Asia-Pacific Economic Cooperation, APEC Anti-corruption Code of Conduct for Business (2007) [hereinafter APEC Anti-corruption Code], *available at* http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~/media/Files/Groups/ACT/07_act_codebrochure.ashx; Int'l Chamber of Commerce, Transparency Int'l, United Nations Global Compact, and World Economic Forum, Resisting Extortion and Solicitation in International Transactions: A Company Tool for Employee Training (2011), *available at* http://www3.weforum.org/docs/WEF_PACI_RESIST_Report_2011.pdf; Int'l Chamber of Commerce, et al., Clean Business Is Good Business, *available at* http://www3.weforum.org/docs/WEF_PACI_BusinessCaseFightingCorruption_2011.pdf; World Economic Forum, Partnering Against Corruption – Principles for Countering Bribery (2009) [hereinafter Partnering Against Corruption], *available at* http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf; Working Group on Bribery, OECD, Good Practice Guidance on Internal Controls, Ethics, and Compliance 2010, [hereinafter OECD Good Practice Guidance] *available at* http://www.oecd.org/dataoecd/5/51/44884389.pdf; U.N. Global Compact, The Ten Principles [hereinafter The Ten Principles] *available at* http://www.unglobalcompact.org/aboutTheGC/TheTenPrinciples/index.html.

[310] This is also reflected in the *Sentencing Guidelines*, which recognizes that no single, formulaic set of requirements should be imposed, but instead focuses on a number of factors like applicable industry practice or the standards called for by any applicable governmental regulation, the size of the organization, and whether the organization has engaged in similar misconduct in the past. *See* U.S. Sentencing Guidelines § 8B2.1 & app. note 2 (2011).

[311] This was underscored by then-SEC Commissioner Cynthia Glassman in 2003 in a speech on the SEC's implementation of the Sarbanes-Oxley Act: "[T]he ultimate effectiveness of the new corporate governance rules will be determined by the 'tone at the top.' Adopting a code of ethics means little if the company's chief executive officer or its directors make clear, by conduct or otherwise, that the code's provisions do not apply

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to them. . . . Corporate officers and directors hold the ultimate power and responsibility for restoring public trust by conducting themselves in a manner that is worthy of the trust that is placed in them." Cynthia Glassman, SEC Implementation of Sarbanes-Oxley: The New Corporate Governance, Remarks at National Economists Club (April 7, 2003), *available at* http://www.sec.gov/news/speech/spch040703cag.htm .

[312] Indeed, research has found that "[e]thical culture is the single biggest factor determining the amount of misconduct that will take place in a business." Ethics Resource Center, 2009 National Business Ethics Survey: Ethics in the Recession (2009), at 41. Metrics of ethical culture include ethical leadership (tone at the top), supervisor reinforcement of ethical behavior (middle management reinforcement), and peer commitment (supporting one another in doing the right thing). Ethics Resource Center, 2011 National Business Ethics Survey: Workplace Ethics in Transition (2012) at 19. Strong ethical cultures and strong ethics and compliance programs are related, as data show that a well-implemented program helps lead to a strong ethical culture. *Id.* at 34. "Understanding the nature of any gap between the desired culture and the actual culture is a critical first step in determining the nature of any ethics-based risks inside the organization." David Gebler, *The Role of Culture* at 1.7, *in* Society of Corporate Compliance and Ethics, The Complete Compliance and Ethics Manual (2011). To create an ethical culture, attention must be paid to norms at all levels of an organization, including the "tone at the top," "mood in the middle," and "buzz at the bottom." *Id.* 1.9-1.10.

[313] *See, e.g.*, U.S. Sentencing Guidelines § 8B2.1(2)(B)-(C) (2011).

[314] *Id.*

[315] *Id.*

[316] *Id.*

[317] *See, e.g.*, Ethics and Compliance Officer Association Foundation, The Ethics and Compliance Handbook: A Practical Guide From Leading Organizations (2008) at 13-26 [hereinafter The Ethics and Compliance Handbook].

[318] *See* U.S. Sentencing Guidelines § 8B2.1(b)(4) (2011).

[319] *See* U.S. Sentencing Guidelines § 8B2.1(b)(6) (2011) ("The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.").

[320] *See, e.g.*, Joseph E. Murphy, Society of Corp. Compliance and Ethics, Using Incentives in Your Compliance and Ethics Program (2011) at 1; The Ethics and Compliance Handbook, *supra* note 317, at 111-23.

[321] Stephen M. Cutler, Director, Division of Enforcement, SEC, *Tone at the Top: Getting It Right*, Second Annual General Counsel Roundtable (Dec. 3, 2004), *available at* http://www.sec.gov/news/speech/spch120304smc.htm.

[322] *See, e.g.*, ICC Rules on Combating Corruption, *supra* note 309, at 8.

[323] *See*, *e.g.* U.S. Sentencing Guidelines § 8B2.1(b)(5)(C); Compliance 101, *supra* note 302, at 30-33.

[324] Corporate Board Member/FTI Consulting 2009 Legal Study, *Buckle Up. Boards and General Counsel May Face a Bumpy Ride in 2009*, at 5 ("Interestingly, while 67% of general counsel say their company is subject to compliance under the FCPA, 64% of those say there is room for improvement in their FCPA training and compliance programs.").

[325] *See* U.S. Sentencing Guidelines § 8B2.1(b)(5)(B) ("The organization shall take reasonable steps . . . to evaluate periodically the effectiveness of the organization's compliance and ethics program.").

[326] *See, e.g.*, Compliance 101, *supra* note 302, at 60-61; The Ethics and Compliance Handbook, *supra* note 317, at 155-60; Business Principles for Countering Bribery, *supra* note 309, at 14.

[327] *See, e.g.*, Michael M. Mannix and David S. Black., *Compliance Issues in M&A: Performing Diligence on the Target's Ethics and Compliance Program* at 5.71-5.81, *in* Society of Corporate Compliance and Ethics, The Complete Compliance and Ethics Manual (2011).

[328] Complaint, SEC v. Syncor International Corp., *supra* note 190; Criminal Information, United States v. Syncor Taiwan, Inc., *supra* note 189.

[329] U.S. Dept. of Justice, FCPA Op. Release 08-02 (June 13, 2008), *available at* http://justice.gov/criminal/fraud/fcpa/opinion/2008/0802.pdf.

[330] Complaint, *SEC v. Rae Sys., Inc.*, *supra* note 92; Non-Pros. Agreement, *In re Rae Sys. Inc.*, *supra* note 92.

[331] U.S. Dept. of Commerce, Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies (2004), *available at* http://www.ita.doc.gov/goodgovernance/adobe/bem_manual.pdf.

[332] U.S. Dept. of State, Fighting Global Corruption: Business Risk Management (2d ed. 2001), *available at* http://www.ogc.doc.gov/pdfs/Fighting_Global_Corruption.pdf.

[333] *See* Harmonising Anti-Corruption Compliance, *supra* note 302, at 46 ("Anti-corruption compliance is becoming more and more harmonised worldwide.").

[334] OECD Good Practice Guidance, *supra* note 309.

[335] APEC Anti-corruption Code, *supra* note 309.

[336] ICC Rules on Combating Corruption, *supra* note 309.

[337] Business Principles for Countering Bribery, *supra* note 309.

[338] The Ten Principles, *supra* note 309.

[339] Integrity Compliance Guidelines, *supra* note 309.

[340] Partnering Against Corruption, *supra* note 309.

[341] 15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).

[342] 15 U.S.C. §§ 78dd-2(g)(2)(A), 78dd-3(e)(2)(A), 78ff(c)(2)(A).

[343] 15 U.S.C. § 78ff(a).

[344] 15 U.S.C. § 78ff(a).

[345] 18 U.S.C. § 3571(d); *see Southern Union v. United States*, 132 S. Ct. 2344, 2350-51 & n.4 (2012).

[346] 15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3).

[347] The U.S. Sentencing Guidelines are promulgated by the U.S. Sentencing Commission:

> The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch composed of seven voting and two non-voting *ex-officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes. The Guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

U.S. Sentencing Guidelines § 1A1.1 (2011).

[348] *Id.* at ch. 3-5.

[349] *Id.* § 2C1.1.

[350] *Id.* § 2C1.1(b).

[351] *Id.* § 3B1.1.

[352] *Id.* at ch. 4, § 5A.

[353] *Id.* § 2B1.1(b)(10)(B), 2B1.1(b)(18)(A).

[354] *Id.* § 8C2.4 (a).

[355] *Id.* § 8C2.5.

[356] *Id.* § 8C2.5(f), 8C2.5(g).

[357] DOJ has exercised this civil authority in limited circumstances in the last thirty years. *See, e.g.*, United States & SEC v. KPMG Siddharta Siddharta & Harsono, *et al.*, No. 01-cv-3105 (S.D. Tex. 2001) (entry of injunction barring company from future FCPA violations based on allegations that company paid bribes to Indonesian tax official in order to reduce the company's tax assessment); United States v. Metcalf & Eddy, Inc., No. 99-cv-12566 (D. Mass. 1999) (entry of injunction barring company from future FCPA violations and requiring maintenance of compliance program based on allegations that it paid excessive marketing and promotional expenses such as airfare, travel expenses, and per diem to an Egyptian official and his family); United States v. American Totalisator Co. Inc., No. 93-cv-161 (D. Md. 1993) (entry of injunction barring company from future FCPA violations based on allegations that it paid money to its Greek agent with knowledge that all or some of the money paid would be offered, given, or promised to Greek foreign officials in connection with sale of company's system and spare parts); United States v. Eagle Bus Manufacturing, Inc., No. 91-cv-171 (S.D. Tex. 1991) (entry of injunction barring company from future FCPA violations based on allegations that employees of the company participated in

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bribery scheme to pay foreign officials of Saskatchewan's state-owned transportation company $50,000 CAD in connection with sale of buses); United States v. Carver, *et al.*, No. 79-cv-1768 (S.D. Fla. 1979) (entry of injunction barring company from future FCPA violations based on allegations that Carver and Holley, officers and shareholders of Holcar Oil Corp., paid $1.5 million to Qatar foreign official to secure an oil drilling concession agreement); United States v. Kenny, *et al.*, No. 79-cv-2038 (D.D.C. 1979) (in conjunction with criminal proceeding, entry of injunction barring company from future FCPA violations for providing illegal financial assistance to political party to secure renewal of stamp distribution agreement).

[358] 15 U.S.C. §§ 78dd-2(g)(1)(B), 78dd-3(e)(1)(B), 78ff(c)(1)(B); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[359] 15 U.S.C. §§ 78dd-2(g)(2)(B), 78dd-3(e)(2)(B), 78ff(c)(2)(B); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[360] 15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[361] Section 21(B)(b) of the Exchange Act, 15 U.S.C. § 78u(d)(3); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[362] *See* Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 §§ 202, 301, 401, and 402 (codified in scattered sections of Title 15 of the United States Code).

[363] 48 C.F.R. §§ 9.406-2, 9.407-2.

[364] 48 C.F.R. § 9.402(b).

[365] *See* 48 C.F.R. §§ 9.406-1, 9.407-1(b)(2). Section 9.406-1 sets forth the following non-exhaustive list of factors:

> (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.
> (2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
> (3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
> (4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
> (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
> (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
> (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
> (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
> (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
> (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

[366] 48 C.F.R. § 9.406-1(a).

[367] Exec. Order No. 12,549, 51 Fed. Reg. 6,370 (Feb. 18, 1986); Exec. Order No. 12,689, 54 Fed. Reg. 34131 (Aug. 18, 1989).

[368] 48 C.F.R. § 9.407-2(b).

[369] USAM § 9-28.1300 (2008).

[370] *See, e.g.*, African Development Bank Group, Integrity and Anti-Corruption Progress Report 2009-2010 7, 14 ("As the premier financial development institution in Africa, the AfDB is determined to root out misconduct, fraud and corruption within its own ranks as well as in the implementation of the projects it finances. In order to do so, the Bank created an anti-corruption and fraud investigation division in November 2005 as its sole investigative body. The unit became operational in June 2006 and commenced investigations in January 2007. . . . Investigations conducted by the IACD [Integrity and Anti-Corruption Department] are not criminal proceedings; they are administrative in nature. Sanctions range from personnel disciplinary actions, such as separation, to loan cancellation and debarment for contractors, which can be temporary or permanent."), *available at* http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Integrity%20and%20Anti-Corruption.pdf; The World Bank Group, *Procurement: Sanctions Committee* ("'The World Bank's debarment process was first formulated in July, 1996, and the Sanctions Committee was established in November 1998 to review allegations and recommend sanctions to the President. Written procedures were issued in August 2001 and are posted on the Bank's website, along with the sanction actions."), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:50002288~pagePK:84271~piPK:84287~theSitePK:84266,00.html.

[371] *See* African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group, *Agreement for Mutual Enforcement of Debarment Decisions* (Apr. 9, 2010), *available at* http://siteresources.worldbank.org/NEWS/Resources/AgreementForMutualEnforcementofDebarmentDecisions.pdf.

[372] *Id.*; *see also* The World Bank Group, *Cross-Debarment Accord Steps Up Fight Against Corruption* (Apr. 9, 2010) ("'With today's cross-debarment agreement among development banks, a clear message on anticorruption is being delivered: Steal and cheat from one, get punished by all,' said World Bank Group President Robert B. Zoellick."), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22535805~pagePK:64257043~piPK:437376~theSitePK:4607,00.html.

[373] 22 C.F.R. §§ 126.7(a)(3)-(4), 120.27(a)(6).

[374] Authority under the AECA is delegated to the DDTC. *See* 22 C.F.R. § 120.1(a).

[375] 22 U.S.C. § 2778(g)(1)(A)(vi), (g)(3)(B).

[376] 22 C.F.R. § 127.7(c).

[377] *See supra* note 286.

[378] *See* Gary G. Grindler, Acting Dep. Att'y Gen., U.S. Dept. of Justice, Mem. to the Heads of Department Components and United States Attorneys on Additional Guidance on the Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution (May 25, 2010), *available at* http://www.justice.gov/dag/dag-memo-guidance-monitors.pdf; Lanny A. Breuer, Assist. Att'y Gen., Dep't of Justice, Mem. to All Criminal Division Personnel on Selection of Monitors in Criminal Division Matters (June 24, 2009), *available at* http://www.justice.gov/criminal/fraud/fcpa/docs/response3-supp-appx-3.pdf; *see also* Craig S. Morford, Acting Dep. Att'y Gen., U.S. Dept. of Justice, Mem. to the Heads of Department Components and United States Attorneys on Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations (Mar. 7, 2008), *available at* http://www.justice.gov/dag/morford-useofmonitorsmemo-03072008.pdf.

[379] Historically, DOJ had, on occasion, agreed to DPAs with companies that were not filed with the court. That is no longer the practice of DOJ.

[380] USAM § 9-27.230.

[381] USAM § 9-27.230.B.

[382] DOJ has recently declined matters where some or all of the following

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circumstances were present: (1) a corporation voluntarily and fully disclosed the potential misconduct; (2) corporate principles voluntarily engaged in interviews with DOJ and provided truthful and complete information about their conduct; (3) a parent company conducted extensive pre-acquisition due diligence of potentially liable subsidiaries and engaged in significant remediation efforts post-acquisition; (4) a company provided information about its extensive compliance policies, procedures, and internal controls; (5) a company agreed to a civil resolution with the Securities and Exchange Commission while also demonstrating that criminal declination was appropriate; (6) only a single employee was involved in the improper payments; and (7) the improper payments involved minimal funds compared to overall business revenues.

[383] *See* Criminal Information, *United States v. Peterson*, *supra* note 8, Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html ("After considering all the available facts and circumstances, including that Morgan Stanley constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials, the Department of Justice declined to bring any enforcement action against Morgan Stanley related to Peterson's conduct. The company voluntarily disclosed this matter and has cooperated throughout the department's investigation."); *see also* Press Release, U.S. Sec. and Exchange Comm., SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud (Apr. 25, 2012), *available at* http://www.sec.gov/news/press/2012/2012-78.htm ("Morgan Stanley, which is not charged in the matter, cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved.").

[384] SEC Rules of Practice, 17 C.F.R. § 201.102(e).

[385] Deferred Pros. Agreement, In the Matter of Tenaris, S.A. (May 17, 2011), *available at* http://www.sec.gov/news/press/2011/2011-112-dpa.pdf; *see also* Press Release, U.S. Sec. and Exchange Comm., Tenaris to Pay $5.4 Million in SEC's First-Ever Deferred Prosecution Agreement (May 17, 2011), *available at* http://www.sec.gov/news/press/2011/2011-112.htm.

[386] *See* Non-Pros. Agreement, In re Tenaris, S.A. (May 17, 2011), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tenaris-sa/2011-03-14-tenaris.pdf.

[387] *See* U.S. Sec. and Exchange Comm., Enforcement Manual § 6.2.3. (March 9, 2012), *available at* http://www.sec-gov/divisions/enforce/enforcementmanual.pdf.

[388] *See id*. § 6.2.4.

[389] *See id*. § 2.6.

[390] 18 U.S.C. § 1514A(c).

[391] 18 U.S.C. § 1513(e).

[392] 15 U.S.C. § 78u-6(a)(3). The new provision defines "original information" to mean information that:

> (A) is derived from the independent knowledge or analysis of a whistleblower; (B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and (C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

[393] 15 U.S.C. § 78u-6; *see also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841-49 (2010).

[394] For detailed information about the program, including eligibility requirements and certain limitations that apply, see Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, *available at* http://www.sec.gov/about/offices/owb/dodd-frank-sec-922.pdf, and the final rules on eligibility, Exchange Act Rule 21F-8, 17 C.F.R. § 240.21F-8.

[395] For example, the rules: (1) make a whistleblower eligible for an award if the whistleblower reports original information internally, and the company informs the SEC about the violations; (2) give whistleblowers 120 days to report information to the SEC after first reporting internally and still be treated as if he or she had reported to the SEC at the earlier reporting date , thus preserving their "place in line" for a possible whistleblower award from the SEC; and (3) provide that a whistleblower's voluntary participation in an entity's internal compliance and reporting systems is a factor that can increase the amount of an award, and that a whistleblower's interference with internal compliance and reporting system is a factor that can decrease the amount of an award. *See* Exchange Act Rule 21F, 17 C.F.R. § 240.21F.

[396] *See* Exchange Act Rule 21F-7(b), 17 C.F.R. § 240.21F-7(b).

[397] For example, SEC staff will not disclose a whistleblower's identity in response to requests under the Freedom of Information Act. However, there are limits on SEC's ability to shield a whistleblower's identity, and in certain circumstances SEC must disclose it to outside entities. For example, in an administrative or court proceeding, SEC may be required to produce documents or other information that would reveal the whistleblower's identity. In addition, as part of ongoing SEC investigatory responsibilities, SEC staff may use information provided by a whistleblower during the course of the investigation. In appropriate circumstances, SEC may also provide information, subject to confidentiality requirements, to other governmental or regulatory entities. Exchange Act Rule 21F-7(a), 17 C.F.R. 240.21F-7(a).

[398] Although SEC does not have an opinion procedure release process, it has declared its decision to follow the guidance announced through DOJ's FCPA Opinion Release Procedure. U.S. Sec. and Exchange Comm., SEC Release No. 34-17099 (Aug. 29, 1980), *available at* http://www.sec.gov/news/digest/1980/dig082980.pdf. SEC Release No. 34-17099 stated that, to encourage issuers to take advantage of the DOJ's FCPA Review Procedure, as a matter of prosecutorial discretion, SEC would "not take enforcement action alleging violations of Section 30A in any case where an issuer has sought and obtained an FCPA Review letter from the Department, prior to May 31, 1981, stating that the Department will not take enforcement action under Section 30A with respect to the transaction involved." *Id*. The release further noted that it would revisit this policy once the DOJ had evaluated the results of the FCPA Review Procedure after its first year of operation. A second release stated that the SEC would continue to adhere to the policy announced in Release No. 34-17099. U.S. Sec. and Exchange Comm., SEC Release No. 34-18255 (Nov. 13, 1981), *available at* http://www.sec.gov/news/digest/1981/dig111381.pdf.

[399] Both DOJ's opinion procedure releases (from 1993 to present) and review procedure releases (from 1980-1992) are available at http://www.justice.gov/criminal/fraud/fcpa/opinion.

[400] The full regulations relating to DOJ's opinion procedure are available at http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf.

[401] 28 C.F.R. § 80.1.

[402] 28 C.F.R. § 80.3.

[403] 28 C.F.R. § 80.12 ("Neither the submission of a request for an FCPA Opinion, its pendency, nor the issuance of an FCPA Opinion, shall in any way alter the responsibility of an issuer to comply with the accounting requirements of 15 U.S.C. 78m(b)(2) and (3).").

[404] 28 C.F.R. § 80.4.

[405] 28 C.F.R. § 80.5.

[406] 28 C.F.R. § 80.6.

[407] 28 C.F.R. § 80.14(a). This non-disclosure policy applies regardless of whether DOJ responds to the request or the party withdraws the request before receiving a response. *Id*.

[408] 28 C.F.R. § 80.6.

[409] 28 C.F.R. § 80.2.

[410] In connection with any request for an FCPA opinion, DOJ may conduct whatever independent investigation it believes appropriate. 28 C.F.R. § 80.7.

[411] 28 C.F.R. § 80.15. Once a request is withdrawn, it has no effect. However, DOJ reserves the right to retain a copy of any FCPA opinion request, documents, and information submitted during the opinion release procedure for any governmental purpose, subject to the restrictions on disclosures in 28 C.F.R. § 80.14.

[412] 28 C.F.R. § 80.8.

[413] 28 C.F.R. § 80.7. "Such additional information, if furnished orally, must be confirmed in writing promptly. The same person who signed the initial request must sign the written, supplemental information and must again certify it to be a true, correct and complete disclosure of the requested information." *Id*.

[414] 28 C.F.R. § 80.9 ("No oral clearance, release or other statement

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purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting issuer or domestic concern may rely only upon a written FCPA opinion letter signed by the Attorney General or his designee.").

[415] 28 C.F.R. § 80.8. FCPA opinions do not bind or obligate any agency other than DOJ. They also do not affect the requesting party's obligations to any other agency or under any statutory or regulatory provision other than those specifically cited in the particular FCPA opinion. 28 C.F.R. § 80.11. If the conduct for which an FCPA opinion is requested is subject to approval by any other agency, such FCPA opinion may not be taken to indicate DOJ's views on any legal or factual issues before that other agency. 28 C.F.R. § 80.13.

[416] 28 C.F.R. § 80.10. DOJ can rebut this presumption by a preponderance of the evidence. A court determining whether the presumption has been rebutted weighs all relevant factors, including whether the submitted information was accurate and complete and the activity was within the scope of conduct specified in the request. *Id.* As of September 2012, DOJ has never pursued an enforcement action against a party for conduct that formed the basis of an FCPA opinion stating that the prospective conduct would violate DOJ's present enforcement policy.

[417] As a general matter, DOJ normally anonymizes much of the information in its publicly released opinions and includes the general nature and circumstances of the proposed conduct. DOJ does not release the identity of any foreign sales agents or other types of identifying information. 28 C.F.R. § 80.14(b). However, DOJ may release the identity of the requesting party, the foreign country in which the proposed conduct is to take place, and any actions DOJ took in response to the FCPA opinion request. *Id.* If a party believes that an opinion contains proprietary information, it may request that DOJ remove or anonymize those portions of the opinion before it is publicly released. 28 C.F.R. § 80.14(c).

[418] 28 C.F.R. § 80.16.

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FCPA Unit
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, DC 20005
http://www.justice.gov/criminal/fraud/fcpa/

FCPA Unit
Enforcement Division
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549
http://www.sec.gov/spotlight/fcpa.shtml

From: Alan Dershowitz [redacted]
Sent: 12/31/2014 11:43:48 PM
To: jeffrey E. [jeevacation@gmail.com]
CC: Martin G Weinberg [redacted]
Subject: Re: Filing in Epstein case

Importance: High

Privileged - Redacted

Sent from my iPhone

On Dec 31, 2014, at 4:01 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Disgusting: Clinton Snared In Pedophile Ring

Will having friends in high places exempt him from the rule of law?

Kris Zane — March 27, 2014

According to former child sex slave Virginia Roberts and a class action lawsuit against convicted billionaire pedophile Jeffrey Epstein, former President Bill Clinton was present during sex parties involving up to twenty underage girls at Epstein's secluded island in the Caribbean. That flight records show Clinton was flown on numerous occasions to the island on Epstein's private jet. Clinton had a close relationship with an employee of Epstein's who compiled thousands of photos of nude young girls posed in lewd positions. And these photos were used as a catalog for Epstein to loan out his girls to powerful politicians and British royalty, including Bill Clinton.

According to the lawsuit:

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…Clinton was friends with an unnamed woman who "kept images of naked underage children on her computer, helped to recruit underage children for Epstein… and photographed underage females in sexually explicit poses."

While Epstein was indicted and jailed for his pedophilia, Bill Clinton oddly has remained unscathed, more than likely by having friends in high places.

If Bill Clinton is in fact a pedophile, will the American people demand that he be put away for a very long time so that he can't hurt any more children? Or will having friends in high places exempt him from the rule of law?

Time will tell.

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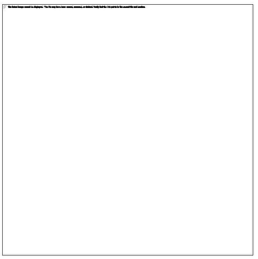


About the Author Kris Zane

109 Comments

1.

JOHNTHEFOXWINS

March 27, 2014 at 12:10 pm — Log in to Reply

NO ONE SHOULD BE SURPRISED BY THIS. SO CASTRATE HIM AND GIVE HILLARY A LOBOTAMY!

-

dfinch

March 27, 2014 at 3:34 pm — Log in to Reply

I can see it now…..If Hillary does go into the Whitehouse I can invision him walking the halls in his underwear and skinny dipping in the Whitehouse pool. Eewwww…

-

Andy

March 28, 2014 at 7:40 am

You do realize that Bill Clinton used to be the President, right? And that Hillary hasn't said that she's even going to run in '16 yet, right? Low information voter.

-

tonistimmel

March 29, 2014 at 8:59 am

I'm sure you meant "in the White House Secretarial Pool"

-

tonistimmel

March 29, 2014 at 9:05 am

Andy really hit the nail on the head when he signed himself off as "low information voter", most of them don't want to admit it.

2.

pdxracefan

March 27, 2014 at 12:26 pm — Log in to Reply

This is my shocked look. Here's hoping this, or something like it will keep that vile, hideous witch of a wife of his out of the campaign in 2016.

3.

Oldveteran

March 27, 2014 at 12:31 pm — Log in to Reply

Like some of the people stated when he was caught "playing" with Monica……he's just a man. Media blew it off, the Demons yelled about going after him just because he was a Demon. I don't think THIS will be "told" to the people, especially by the media. Don't want to make this man's wife look bad. Then, remember how "slick" asked for the meaning of "is" and "sex." Demons can be some of the most vile and ugly people on the planet……..

-

Hiram

March 27, 2014 at 4:53 pm — Log in to Reply

I'm going to stop calling them DemonRats and just call them Demons!

▪

Marjorie

December 13, 2014 at 11:19 am

That is what I have been calling the for years.

○

Magic1808

March 30, 2014 at 12:59 am — Log in to Reply

I don't think you have to worry about making Hillary look bad, she does that well on her own. After Benghazi, she lost all of my respect.

4.

PDavis

March 27, 2014 at 12:33 pm — Log in to Reply

I am so sick of everyone acting like the Clinton's and even the Kennedy's are royalty. They are just a bunch of depraved people, bloated by their excess and wealth. If Clinton has been a part of this w/Epstein, then he should be in jail too where he belongs.

5.

JoAnn523

March 27, 2014 at 12:37 pm — Log in to Reply

Why is anyone surprised ? They both have ALWAYS been disgusting and revolting along with greedy and corrupt !
For the most part almost every creature like this always ends up being a filthy so called Democrat. Look at all the others that are in prison or should be there now. If they were all in prison we may have a chance of a decent country once more !!!

6.

jayleigh

March 27, 2014 at 12:49 pm — Log in to Reply

And? What will happen? What WILL happen and what SHOULD happen are two different things. The lamestream media will never cover this story. Nothing will come of it. To the left, this is just a ho-hum blip. i'll be mega-surprised if Reuters even blinks and puts it on an inside back page. The AP won't touch it… so? i don't see it making an impact on the Hill's run – not when the media will treat it as a yawner. As a former CPS child advocate, i can't print here what i think ought to happen to him….

-

John

March 28, 2014 at 9:59 am — Log in to Reply

Are you self-quashing your freedom of expression or what ???? It's not about "SHOULD" But IF he's impicated, but when ! More than likely Never ! "IF" you were meerly "implicated" You are automatically publicly scorned ,forever. you will always be known to have been implicated in Child porn and also forever be known to be a Pedophile , right ? The Evidence will never surface , or will it ? Remember that Obamacare thingy ? It has been and always will be a lie , unless of course someone "GROWS A "F"ing PAIR" and comes up with Documentation to prove it ! Grow a pair yourself JAYLEIGH ……Speak up my fellow American citizen ! "Just do it " , I double dog dare ya !

-

daniel9867

March 30, 2014 at 3:22 pm — Log in to Reply

i wouldn't be putting that your a cps advocate do to the fact that they are the biggest child theft ring in the world i think every fcking one that works for cps should be put in prison for life.

7.

blackhawk

March 27, 2014 at 12:51 pm — Log in to Reply

Sure lets make Hillary President so Bill can expand his sex addition.They are one sick family.

8.

rocquedog

March 27, 2014 at 12:56 pm — Log in to Reply

I hope that I'm around when he has to face his maker! So many crimes, so many judgements!

○

John

March 28, 2014 at 10:09 am — Log in to Reply

Focus on one thing , and ONLY one (1) my fellow American Citizen ! ! Obamas Oath of Office ! "IF" The American citizens can't see this for what it is, We the People will epically loose the battle for OUR very own idividule FREEDOM, PERIOD ! "F"ing Freedom will be GONE ! Get the picture , YET ?

○

Beeta46

March 30, 2014 at 5:01 pm — Log in to Reply

And when she faces our creator… Google 'Clinton Body Count" and see the list of people that they are responsible for having killed… She has so many people that are stupid enough to do her bidding in murder. Do they now know that murder carries a sentence of HELL in the eyes of God.. That is right they do not believe in God… They think they are GOD!

9.

Nancy

March 27, 2014 at 1:05 pm — Log in to Reply

I CAN'T SAY I AM SURPRISED, HE HAS THE MORALS OF AN ALLEY CAT, AND SO DOES HILLARY. I WOULD HATE TO SEE HER AS PRESIDENT WITH ALL OF THE CRAP SHE HAS PULLED. I THIBN WE ALL KOW THA THE MARRIAGE IS OF CONVENIENCE, SHE IS INTO WOMEN, NOT BILL OR OTHER MEN.

Kathy

March 30, 2014 at 3:52 pm — Log in to Reply

Nancy, you are so right and it is time now to take back the Peoples White House and don't let this trash back in. We have had enough with obama trashing our Great Nation AND THE WHITE HOUSE. I suspect very soon he will have us in a War. Neither Hillary the dike or obama respects our service men and they should both be put in jail for how they handled our men in that ugly country. God Bless America As We Knew It and In God We trust. NO MORE DEMORATS OR GAYS FOR PRESIDENT.

10.

Carl

March 27, 2014 at 1:06 pm — Log in to Reply

>>> THIS MUST BE " STRIKE # 9 " OF SLICK WILLIE <<< ANYONE WHO WOULD LISTEN TO HIS B . S . NOW MUST BE JUST AS DEPRAVED AS HE IS . BTW ————BY THE WAY ~ BOTH ' SLICK WILLIE ' AND HIS BITCH " HITLERY " CLINTON WERE CARD CARRYING COMMUNISTS WHILE IN COLLEGE TOGETHER .

11.

DockyWocky

March 27, 2014 at 1:08 pm — Log in to Reply

Years ago, I watched as the Dirty Old Men of the Panamanian government picked up their little blonde playthings from their crib in Panama City.

I have a feeling that if anyone really investigates the crop of liberal Hypocrats in power today, they would find who were the real Dirty Old Men of the party.

Bubba Clinton is only the first to be exposed.

12.

Carol

March 27, 2014 at 1:10 pm — Log in to Reply

Is anyone surprised? They shouldn't be! Ejo wants any of these evil spirits back on the White House?

13.

Carol

March 27, 2014 at 1:11 pm — Log in to Reply

Is any one surprised? Who wants any of these evil spirits back in the White House?

○

John

March 28, 2014 at 10:19 am — Log in to Reply

Well, LOFL , He alone Literally "Stained the Oval Office with his very own DNA" ! Obama is shurely DEFACATING ON IT as we speak, AS WELL AS THE CONSTITUTION .And then…….We the People are idley standing by and watching him destroy America AND the Constitution ! The simplicity of it is, That obama is a unconstitutional scholar / LIAR, period !

14.

Spudmans2

March 27, 2014 at 1:17 pm — Log in to Reply

They do not call him "slick" willy for nothing. Short of an actual photograph or video of him engaging in sex with a child there is no way he will get this pinned on him. Just remember how many people (40-50) connected to him and "her" that have lost their lives (murdered) and he's never been prosecuted.
As much as I would like to see him and his carpet munching wife brought down it is just not going to happen, at least this way it's not…

15.

Randolph

March 27, 2014 at 1:22 pm — Log in to Reply

So boy a la mode is his choice of dessert?

16.

99airforce

March 27, 2014 at 1:36 pm — Log in to Reply

I am not surprised, if hey dig deeper I think they will find Hillery was there too.
They were vile people, she was responible for the death of 4 Real Americas, but what ddifference does it make, its bad enough we have become a joke in the world, our anotited one has crippled our military, but they are letting anyone come in to our country, with no fear of deportation! Obama needs to be deported, but Kenya does not want his sorry ass back.

17.

mwood

March 27, 2014 at 1:36 pm — Log in to Reply

the clintons have lied their way out of almost every crime on the books

18.

knightflyerii

March 27, 2014 at 1:39 pm — Log in to Reply

I'm no Bill Caligula fan, but the column fails to mention the ages of these "children" he supposedly fooled around with. Are they more 16 & 17 year old girls who can pass for 24 as females are so good at? Did Bill Caligula know the ages of these supposed children before he started fooling with them?

19.

MMillAR

March 27, 2014 at 1:45 pm — Log in to Reply

"will the American people demand that he be put away for a very long time"
Yeah… lets put that one right over there with the mythical Obama impeachment.What is more likely is that NAMBLA now has a new champion and this might become part of the kickstart to force Americans to tolerate yet another class of pervert. You don't have to be "religious" to know a pervert when you see one.
You laugh but, "gay rights" is just the start of this downward spiral.

20.

Nikita63

March 27, 2014 at 1:45 pm — Log in to Reply

This self proved scumbag was impeached as President but got off and he will this time too. The left has so utterly turned us into a valueless and degenerate society and is determined to destroy what little of decency is left that he will NEVER be held either responsible or accountable for his sins. We have a criminally complicit Congress which has allowed the rule of law to cease to matter and when the time comes when they NEED it for their OWN SELF PRESERVATION, it will not be available even to them. As they have sown, so shall they reap! Between them, The Clintons are the perfect example of what is wrong with the Country at large and one of the major reasons we are now stuck with one worse and a set of political parasites who enable HIM to barter our freedoms, sovereignty and resources to our enemies. We have a word for those. You all know what it is but few in this country call them what they are, not only violators of their sworn oaths of Office but: TRAITORS. This one also happens to be apparently, according to this reference, a pedophile. will wonders never Cease or for that matter, CEASE TO DISGUST?

○

msueh

March 30, 2014 at 3:23 pm — Log in to Reply

"[…] he will NEVER be held either responsible or accountable for his sins."
Perhaps in this life, but not when he has to grovel before his Maker.

○

Jim

April 22, 2014 at 7:59 pm — Log in to Reply

Der Schleek Meister

21.

savannarose55

March 27, 2014 at 2:00 pm — Log in to Reply

do we really want this disgusting drama in the whitehouse again. i heard both the clintons lost their lawyers license, then bill gets impeached but he's like an enigma and you cant rid of him, then hillary as sec of state allows our embassy or annex (the stories never the same) to be attacked and we lose four americans and lies to the public thinking we're all idiots and we would just go along with the ridiculous story that this happened because of a muslim allah bashing tape, and why do we think she would be good for us as president…. people that dont agree with these two wind up dead, theyre toxic……. lets say we at least learned something from the clinton dynasty……

John H. Montgomery Jr. USMC (retired)

March 31, 2014 at 10:39 am — Log in to Reply

There's more scum supporting him than righteous people against him. they know there's awaits them. they don't care. people don't care. They rather see Satan in the white house than a conservative.

22.

mystic11

March 27, 2014 at 2:09 pm — Log in to Reply

NO SURPRISE!!!. HIS OVAL OFFICE ESCAPADES WITH THE MUCH YOUNGER GIRL WAS PROOF THAT HE LIKED "YOUNGER CHILDREN". HE HAS ALWAYS BEEN AN "OLD SLOBBER DRIPPING SEX MANIAC, PEDOPHILE. HIS WIFE LOOKS LIKE A COLD HARD, MIND WARPED, MURDERER (BENGHAZI) LESBIAN WHO JUST "STOOD BY HER MAN" TO HIDE HER SEXUAL PREFERENCE WHILE CONNING AMERICANS AS IF THEY WERE SAINTS. ONLY THE DEMOCRATS AKA DONKEYS/ ASSES (DEMS LOGO) FELL FOR THAT CON/CRAP BECAUSE THEY ARE THE MOST STUPID ANIMALS AKA PEOPLE ALIVE!!!!!!!!!!!!!!

THESE COMMIES AKA PROGRESSIVES ARE THE MOST DESPICABLE, LYING ANIMALS (OTHER THAN THEIR PAL, THE COMMIE,NAZI, HITLER#2 MUSLIM TERRORIST THE WHITE HOUSE) ALIVE.
THEY BOTH SHOULD BE IN PRISON (HER FOR MURDER (BENGHAZI, ETC.) AND HIM FOR SEXUAL PERVERSION, PEDOPHELIA!!!(?) GOOD CRIMINAL DEMOCRATS.

CAN ANYONE IMAGINE THE SECOND HALF OF THIS CRIMINAL DUO BEING "PRESIDENT OF AMERICA" AND CONTINUNING HER (THEIR) CRIME SPREES AGAINST AMERICA AND HUMANITY, POLITICALLY AND PERSONALLY THAT THEY HAVE ENJOYED FOR MANY YEARS????

A FEW "GOOD DEMS" ARRESTED THIS WEEK, CALIFORNIA NORTH CAROLINA, 4 OR 5 BLACKS IN MASS.(?) THAT SHOULD HAVE BEEN ARRESTED FOR THEIR CRIMES OF BRIBERY, ETC. BUT THE CROOKED ATTORNEY(?) THINKS IT WOULD BE "RACIST" AND SAID "NO". (DEMS SURE LIVE UP TO THE LOGO, DONKEYS/ASSES!!!!) IF THE BLACKS HAD BEEN WHITE AND GOP, CONSERVATIVE, INDEPENDENT, ETC. THEY WOULD HAVE BEEN ARRESTED IMMEDIATELY AND GO TO PRISON FOR MANY YEARS!!!! THOSE CRIMINAL DEMS AT WORK AS USUAL, AGAIN!!!!

GOD BLESS AMERICA.

23.

Linda

March 27, 2014 at 2:11 pm — Log in to Reply

This is true, but is not limited to Bill Clinton or the Democrats. It permeates the top levels of most, if not all govts, as well as the Vatican, and includes all parties. Watch the following documentary prepared by the BBC for The Discovery Channel. It was pulled at the last moment due to pressure from high levels of the US govt. Listen for the Republican names. Then share it everywhere! http://youtu.be/vBSIDQt5Dwc

Watch this one for the international factor.
http://youtu.be/XhnG76vwNms

24.

Ron

March 27, 2014 at 2:15 pm — Log in to Reply

Bill Clinton is a pervert and Hilary allows him to prey on women and Children. Let us get rid of all the Democrats who have all become communists and liars.

25.

junctionshamus

March 27, 2014 at 2:17 pm — Log in to Reply

Sure it was Bill, and not Hill?

Someone wanna double check that, just to be sure. With young girls, chances are 50-50…

26.

Carla

March 27, 2014 at 2:21 pm — Log in to Reply

about that 'War on Women'…..

27.

slammer

March 27, 2014 at 2:28 pm — Log in to Reply

is this real or onion?

28.

mystic11

March 27, 2014 at 2:42 pm — Log in to Reply

OOPS!!! SORRY, I ACCIDENTLY OMITTED THE COMMA BETWEEN CALIFORNIA AND NORTH CAROLINA IN THE FIRST SENTENCE OF THE LAST PARAGRAPH IN MY COMMENT!!!

29.

HappyClinger

March 27, 2014 at 3:17 pm — Log in to Reply

People who are paid to keep their mouths shut about illegal activities are not obligated to keep their mouths shut. The agreement does not have the force of law.

TALK, GIRLS!

30.

malcolmX

March 27, 2014 at 3:19 pm — Log in to Reply

cut off the old bast66rds BALLS AND TONGUE;; filthy scumbag……libocrats [44 raids today] are low live hypocrites with the morality of a cockroach;; nuke the fu##kers.

31.

Gary

March 27, 2014 at 3:49 pm — Log in to Reply

Exempt. Just like Obama, he won't even appear in network news stories.. The left's agenda is more important than abused children.

32.

Mel

March 27, 2014 at 4:19 pm — Log in to Reply

So this is why Commiecrats have been knocking on the door of legalized pedophilia.
I was wondering what was up.
Stay on this WJ.

33.

michael

March 27, 2014 at 4:47 pm — Log in to Reply

Now we know what Prs Obama had on them

34.

michael

March 27, 2014 at 4:50 pm — Log in to Reply

And with the help of Eric Holder and his DOJ (because its not ours) he can and did keep him out of jail

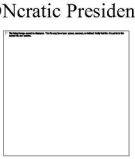
35.

Bob Bitchin'

March 27, 2014 at 5:10 pm — Log in to Reply

Oh Oh! Sounds like Billy Jeff may have really stepped in it this time. I doubt he will ever be prosecuted nor will the mainline liberal biased news media ever carry any such story no matter what the proof.

Gee, maybe after OButtbreath leaves office, evidence will come out of his visit to HOMOsexual bath houses, HOMOsexual rendezvous and relationships and dare I say? Evidence of pedophilia with underage boys. OButtbreath has made many enemies as has his wife and the Clintons both. A bit coincidental that the last two DEMONcratic Presidents in this country should be embroiled in such controversy.

36. 

Magic1808

March 27, 2014 at 5:10 pm — Log in to Reply

The laundry list of all the crimes committed by slick Willy are available at the following site. It's amazing the man is still so active in Washington, and the government. He often represents America in many activities. I am not surprised to learn of his involvement in Pedophilia, and is probably behind this push to legalize it. When are

American's going to stand up against this? This is way beyond corruption, and needs to be stopped dead in its tracks. When will Americans stand up and make a stand against such evil?
http://prorev.com/legacy.htm

37.

rocquedog

March 27, 2014 at 5:25 pm — Log in to Reply

Magic, I say we start May 16th in DC at the OAS event. We get rid of the current evil in the Wh. then continue "cleaning house".

38.

Chase

March 27, 2014 at 5:49 pm — Log in to Reply

Ps, moderators, next week I start hacking in and posting without your intervention. So look forward to it…. :)

39.

Bds

March 27, 2014 at 5:56 pm — Log in to Reply

The question asked is: "Will having friends in high places exempt him from the rule of law?"

The answer is YES because those in "High Places" are still trying to decipher the real meaning of the word "is"

BDS.

40.

MuslimLuvChrist

March 27, 2014 at 6:52 pm — Log in to Reply

I forgot how corrupt and disgusting the Clintons really are.

-

mlimberg

March 30, 2014 at 12:28 pm — Log in to Reply

Can anyone say “Sheep Ranch”?

41.

sunshkid

March 27, 2014 at 6:55 pm — Log in to Reply

I’m definitely not surprised. Consider that Monica Lewinski was 22 at the time she first had sex with him (and he was more than double her age at the time, considering he was 49 years old), I can see where his bent for the young was already manifesting itself.

42.

Magic1808

March 27, 2014 at 6:58 pm — Log in to Reply

Rocquedog…I plan on being there, let’s get these corrupt bastids out of OUR Whitehouse!

43.

tonistimmel

March 27, 2014 at 6:59 pm — Log in to Reply

Remember back to the good ole days when the Secret Servants used to be a law enforcement agency known as the Secret Service. Of course back then even the democrats has some sense of honor and/or discretion.

44.

Magic1808

March 27, 2014 at 7:27 pm — Log in to Reply

Muslimluvchrist…Remember…now don’t forget! Let’s not forget one of the highlights of his presidency, signing NAFTA, which resulted in America losing countless businesses that provided jobs for Americans, which we still suffer from.

45.

MrBrittcoleman

March 27, 2014 at 7:36 pm — Log in to Reply

If this is true then it is truly disgusting. That being said, after reading the comments section most of you need to get off of your republican high horse. Many republican politricksters have also been embroiled in sex scandals, some of them with minors, and some with underage boys. Now before the vains start popping out of your neck causing you to respond to me in all caps calling some sort of commie democrat leftist, realize that I hate the democrats just as much as I hate the republicans. In fact let's just call them the demublicans or the republicrats, whatever your pleasure. Most of you need to realize it's not about the ideology of one party or the other, it's about the ideology of power. These politricksters, all of them more stinking rich than average Joe American, get in the insulated world of political power and get a sense of invincibility and entitlement. They don't care about you or me, not a single one of them. But, as long as we keep seeing each other as the enemy rather than realize that they are the real enemy bent on destroying this country and the world then we, our children, and our grandchildren are doomed.

Below is a link to federal sex scandals perpetrated by republicrats and demublicans alike. Keep in mind that this list does not include local and state level scandals.

http://en.wikipedia.org/wiki/List_of_federal_political_sex_scandals_in_the_United_States

46.

Magic1808

March 27, 2014 at 8:16 pm — Log in to Reply

Sunshkid, I thought the same thing…he took advantage of a young Wh intern who probably looked up to him like a God almost. He perhaps fed her lies and lured her to his den. It's not hard to imagine the senario…

47.

rocquedog

March 27, 2014 at 8:21 pm — Log in to Reply

Clinton is a low life scum sucking child molester! He's a disgrace to the human race. His wife is no better, as she allowed 4 of our patriots to be murdered without sending help when they pleaded for it.

48.

Magic1808

March 27, 2014 at 8:26 pm — Log in to Reply

Tonistimmel, yes, the Secret Service guards the president. Today I question the sense of honor and/or discretion of all politicians and government officials. This is no longer the America we were brought up in. And, I am not sure any of them have those qualities, or good intentions they once had.

49.

99airforce

March 27, 2014 at 8:33 pm — Log in to Reply

Do you remember the white water land scandal, the only ones not dead, or in jail were the Clinton's, when is the slobbering love affair with the Clinton's going to end, 4 great Americans died because of this witch!

50.

Magic1808

March 27, 2014 at 8:43 pm — Log in to Reply

Rocquedog, the latest info is that Chelsea is not slicks daughter, but is the daughter of Webb Hubbell: http://www.mofopolitics.com/2013/08/23/the-clintons-greatest-shame-chelsea-clinton-is-the-biological-daughter-of-webb-hubbell/. As for Benghazi, I watched the whole thing go down, as I was online when the first call for help came in. At the time, they claimed that the attack was because of an anti Islamic video. All the while, unbeknown to us, we were giving the Syrian Rebels arms, which had already been infiltrated by Al Nursa/Al Qaeda. In order to keep it all under wraps, Benghazi took care of all credible witnesses. IMHO.

51.

bobmann101

March 27, 2014 at 8:51 pm — Log in to Reply

We shall see what will happen. I believe he was involved, but I need to see the proof.

52.

Magic1808

March 27, 2014 at 9:07 pm — Log in to Reply

Rocquedog, I agree he is a low life, and Hillary is just as bad. Her relationship with Huma Abedine and Anthony Weiner leaves room for many questions. Weiner is runner up to slick Willy on preying on young

women, and Hillarys relationship with Huma is suspicious to say the least. Birds of a feather? Or should I say perverts of feather?

53.

Magic1808

March 27, 2014 at 9:17 pm — Log in to Reply

99AIRFORCE, yes I do remember the white water land scandal, and you are correct about the outcome. If anyone has any questions concerning this, the following site gives the information. They were criminals, and I still do not understand how slick Willy was not considered so at the time of his nomination.

http://prorev.com/legacy.htm

54.

Doug James

March 27, 2014 at 10:03 pm — Log in to Reply

Bill Clinton has had a sexual problem for his entire life. People like the Clintons, Obamas, Bidens, Reids, Schumers, Boehners, Bushs, etc. can willingly, knowingly, & intentionally commit crimes with no recourse. The U.S. Supreme Court rules Obamacare is a tax, Most likely will make Hobby Lobby & similar companies do what they are morally against, Will likely ultimately rule to enact strict gun control laws if not an outright ban, Allow open boarders, & Immigrants. They always rule in the gov'ts favor. Rarely for the citizenship any longer. If the Constitution is ever amended and/or rewrote which they are in favor of they need to be given term & power limits. They are the Supreme Power of this Nation and have proven to be a bunch of decrepit buffoons.

55.

Magic1808

March 27, 2014 at 10:39 pm — Log in to Reply

BOBMAN101, I sure hope so, this subject is outrageous, and I don't know where the minds of these people are. A pedophile ring is beyond my scope of understanding, and about one of the worst things that could ever be considered acceptable. It is an extremely important issue, and I sure don't want it to escape full coverage by the media.

56.

Mario

March 27, 2014 at 10:47 pm — Log in to Reply

Why are Democrats involved in moral issues? These people should be put away until kingdom come especially Bill Clinton if he is ever involved. They are dangerous to be around. Castrate these pedophiles ASAP. They are so low life that if fed to the sharks, the sharks will spit them out due to their obnoxious odor.

57.

BILL

March 27, 2014 at 11:22 pm — Log in to Reply

SOUNDS LIKE SLICK WILLIE HAS BEEN GETTING OFF FOR SOME TIME NOW (IF YOU KNOW WHAT I MEAN)

58.

Taking care of business!

March 28, 2014 at 1:10 am — Log in to Reply

Bill should be castrated, then Hillary would be the only one with a member.

59.

lady_liberty_1776

March 28, 2014 at 5:06 am — Log in to Reply

No more Clintons or Bushes, ever again! The White House is going to have to be fumigated as it is. After the string of disgusting excuses for human beings we've had for Presidents, maybe we should just raze it and rebuild. Slick Willy and Killary should both be in prison. Instead they're adored by their disgusting supporters. Anyone that would support or even associate with these scum must be of the same caliber.

-

Taking care of business!

March 28, 2014 at 5:09 am — Log in to Reply

Don't stop there. No more Obama's either. And it seems there's always a Kennedy in the wings, willing to muddy the water.

○

tonistimmel

March 29, 2014 at 9:40 am — Log in to Reply

The hate "W" machine is still running in spite of the fact that "W" was a better president than Clinton and Obozo and their combinatuion. I realize that being better than those two is no real accomplishment, but "W" at least made the list of good presidents, may be not excellent, and definitely not great, a whole lot more than acceptible.

60.

Bob Bitchin'

March 28, 2014 at 6:46 am — Log in to Reply

Call it paranoid, call it conspiracy theory, call it what you watch. I wouldn't be one bit surprised to find out that there is/are a puppet master/group of puppet masters in the shadows pushing these douche bag politicians at us and giving us the illusion that there is a difference in their politics and philosophies when in reality they are all the same just doing their master's biding. They will push this liberal agenda just far enough to the edge of the cliff then pull back and give us back the conservative government so we can take retributions on the liberals for their treasonous behavior. Heads will roll, asses will get kicked, gays & blacks will once again be of no consequence and the illegals will be run out of the country. Once things have calmed down, they will change the politics again and the beat goes on.

61.

willyrho

March 28, 2014 at 7:06 am — Log in to Reply

We knew this when Monica Lewinski "with the Blue Dress with the Semen on it" exposed Billy Clinton, in the White Hoer House in DC, he had a B.J. with Monica Under the Desk in the Oval Office when he was impeached, but the Nat See Senate would not convict the Pedophile mur-derer of Vince Foster.

But we see with the new charges coming against the Felon, Hairy Reid, who takes Bribes and Steals as the DemoNatSee Leader of the Nat See Controlled Senate.

All DemoFascistCrats are Lawless and EVIL.

To think that Ronald Reagan would not remove his Suite Jacket in the Oval Office because he had such respect and Admiration of the Oval Office. And the DemoNatSees/Fascists/Marxist/Muslims now in the White House Suck…

62.

rocquedog

March 28, 2014 at 7:22 am — Log in to Reply

Willy, don't forget Ron Brown. And now we have Obama's "Ron Brown" with the Fuddy incident. Liars, cheaters, sex perverts, murderers, etc. The Demoncrats have truly been put in charge of Satan's poliitical wing.

63.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 9:05 am — Log in to Reply

Hillary likes the P word. perversion runs in the family. Obama is on the down low.

64.

John

March 28, 2014 at 10:35 am — Log in to Reply

NIXON lied once and was no longer trusted to lead the free world . Obama leads the free world and is STILL in office , but it won't be long till it is in the hisory book and noted as " The way we were " and how stupid & gullible we were to sit on our hands , and do "too Little to damned late" Or for no better words…….NOTHING !
ONE very BIG question my fellow American Citizens……..
Didn't Obama , just like every other president in history after Lincolns death , Swear on the Lincoln Bible to "Support and Defend the Constitution " ? Don't strain your freakin' Neurons folks, the answer is YES !

65.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 10:35 am — Log in to Reply

hopefully people will see, putting in the white will also put a pervert back in the white house. Hillary has the P word coming through the back door for her.

66.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 10:59 am — Log in to Reply

need to our representitives, if they can't mov e toward impeachment, than they won't have job.

67.

David

March 28, 2014 at 2:20 pm — Log in to Reply

This kind of evil is what kept Romney out of office, for the time being. Obama did not win the vote, he was placed in by the same people who protect Clinton in his evil sin. Of course he should be in prison, but he won't see a day in prison as long as righteous people don't stand up to evil.

○

John H. Montgomery Jr. USMC (retired)

March 29, 2014 at 11:27 am — Log in to Reply

Thy made up things on Romney. he things stiring us in the face and do anything about it.

68.

John

March 28, 2014 at 3:08 pm — Log in to Reply

WHAT DIFFERENCE DOES IT MAKE!
WHAT DIFFERENCE DOES IT MAKE!
WHAT DIFFERENCE DOES IT MAKE!

69.

William

March 28, 2014 at 3:55 pm — Log in to Reply

Does this really surprise anyone?

70.

Valchrist1313

March 29, 2014 at 12:47 am — Log in to Reply

The girls listed here (well not here, in an article longer than a twitter post) are of age in every European country, and Canada. Just like age of drinking, you guys are the anomaly with a higher degree of repression in all social areas.

The reason for that is the crazy -ass, hate spewing, xenophobic, ignorant political bandwagons and scape-goating your society is rife with. Right now you're trying to figure out how you can blame this on Obama aren't you? Yeah I know. Obama. His fault. Somehow. (Actually several posts already are)

That said, yeah he's stupid. He should follow the laws of his own country. If that's your laws he should be following them.

However, nobody here has the slightest friggen idea if any of this is the least bit true, but you're already forming the lynch mobs.

It's not because you're really upset about the issue at hand. It's hatred of your fat and miserable existence, your subscription and indoctrination in to disgusting and brutal pseudo-religious political beliefs, and your lazy inability to fact check a thing for yourself when you find it so much easier to ride on a bandwagon.

Search "consistency theory", if you can handle all the big words and ideas, and you'll figure out why you are unable to learn and grow as people.

I swear most of you can't create or express an idea without it being ascribed to a political view.

○

Oldveteran

March 29, 2014 at 4:55 pm — Log in to Reply

Huh? Wha? I'm figuring you're not an American citizen. You "bunched" up all into a group that you describe with some wonderful words. Maybe YOU know the WHOLE TRUTH, there are plenty who recall how a newly elected President had to give MONEY to a couple of women who had been "assaulted" by this scum bag. Check the news papers…….no not twitter…….Maybe you don't know about the "White Water" scandal or about Vince Foster, who "shot" himself in the RIGHT side of his head; the man must have been so depressed he used his "off" hand to pull the trigger. Maybe his left hand just shook too much. The "Monica" escapade was just a man having a fling with a silly woman, makes no mind the woman was the same age as his daughter. HE LIED UNDER OATH TO A FEDERAL JUDGE. He stood in front of the entire country and stated "he did not have sex with that woman." As for political view points…….isn't that how governments are elected? I don't know what country you live in, but here we like to THINK before voting, OOPS! I mean generally; right now there are too damn many NON thinking casting ballots. That's how we got slick and now Obummer.

▪

Valchrist1313

March 29, 2014 at 8:18 pm

Well, your post just proved my point about not being able to base an idea independent from a political view.

About categorizing a populace: anyone intelligent enough to think for themselves isn't going to need me to validate their self-worth, and realises within themselves that this label doesn't apply to them.

71.

DockyWocky

March 29, 2014 at 8:43 am — Log in to Reply

Good thing it was on here for a moment or two, because once the powers that be get their paws on this, Bubba, The Pervert info, they will bend over backward to make it disappear from view.

By the time 2016 rolls around, Hillary and the co-president (Bubba) will be scrubbed squeaky clean and she'll be so sanitized, the Pope will bow to her when she deigns to meet him.

72.

DockyWocky

March 29, 2014 at 8:50 am — Log in to Reply

I find the funniest thing is the word "Choice" has been taken over by the pro-abortion mob, and the stupid people of the former united States don't have any choice, anymore, period.

If we had a smidgen of Choice anymore, the Clintons would be whining about getting paroled from their original prison sentences for wasting Vince Foster – on, get this, humanitarian grounds.

We have no choice. All you have to do is open your eyes and you'll see that we're still nothing but the serfs who pay for the daily antics of the lords. Nothing has changed.

73.

Cal

March 29, 2014 at 1:27 pm — Log in to Reply

ANYBODY who actually believes this obviously fake story is DEEPLY gullible.

John Prewett

October 29, 2014 at 11:00 pm — Log in to Reply

Right, obviously he was going to Epstiens “fantasy island” just to walk the beach looking for seashells.

74.

Mario

March 29, 2014 at 10:44 pm — Log in to Reply

What do you expect from a low life immoral person. Nothing up in the head as nothing inside his two balls.Worst is that he is a DemocRAT.

75.

ConservativeMe

March 30, 2014 at 12:20 pm — Log in to Reply

HEY KILLARY, ” WHAT DIFFERENCE DOES IT MAKE?”, RIGHT?

76.

james

March 30, 2014 at 1:37 pm — Log in to Reply

It comes as no surprise at all. It seems That ItIs a presequite to have a criminal record to run fo. Look at Gingrich and Romney stealing from Fannie Ma, oscammetr the criminal .They are all thieves,It does not matter what political party they belong to, A thief Is a thief Is a thief

77.

xron2

March 30, 2014 at 2:45 pm — Log in to Reply

Bill likes sex with children and Hillary likes sex with Muslim Women and helping to kill American Service men probably to please her Muslim Girl Fiend! Hang both of them beside Obama!

78.

BOBSAYSO

March 30, 2014 at 3:33 pm — Log in to Reply

I'm not surprised that a proven serial-rapist, murderer and drug trafficker would also be a pedophile. The leader of the administration before his, yes that guy, was also linked to a pedophile prostitution ring uncovered in the Franklin pedophile investigation. Research it; and also the name Johnny Gosh. It's a fascinating true story.

79.

msueh

March 30, 2014 at 3:34 pm — Log in to Reply

When are both of them going to end up on their list of "disappearances"?

80.

Doug

March 31, 2014 at 6:45 am — Log in to Reply

The clintons are just evil vial people and I am not surprised about this at all. Also there was a comment asking about the ages of those girls involved? "Clinton was friends with an unnamed woman who "kept images of naked underage children on her computer, helped to recruit underage children for Epstein… and photographed underage females in sexually explicit poses."
Read more at http://www.westernjournalism.com/clinton-snared-pedophile-ring/#PkFfIXxkTOIMkgS1.99

Pretty much covers that they were in fact underage children. Makes me sick to my stomach and would love to see "old icky billy" get his just reward but doubt it as the article also states, "because of friends in High Places".

81.

Ian

March 31, 2014 at 8:11 am — Log in to Reply

This hasn't surfaced because it's a bunch of B.S.

John Prewett

October 29, 2014 at 10:58 pm — Log in to Reply

yea, Slick Willie is soooooo straight-laced puritanical.

82.

Miss

April 7, 2014 at 9:03 pm — Log in to Reply

This is an old story. When Mr. Clinton was in the WH, there were stories going around that he was at one of his numerous cocaine parties and got an under-aged girl hooked on dope.

83.

Rhonda

July 14, 2014 at 9:48 am — Log in to Reply

What is the FBI doing? I guess they are owned by the Clintons…..and what of the Bush family too?

84.

John Prewett

October 29, 2014 at 10:56 pm — Log in to Reply

His friends in high places are most likely more vile than he is. See Matt 4

85.

mwood

October 30, 2014 at 8:15 am — Log in to Reply

check out all the death and destruction in the clintons past and then think about the possibility they might pay for any of it

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5,935
people

Read more at http://www.westernjournalism.com/clinton-snared-pedophile-ring/#eVqlufHP4TEz8fmK.99

On Wed, Dec 31, 2014 at 3:55 PM, Alan Dershowitz <[redacted]> wrote:

Privileged - Redacted

Sent from my iPhone

On Dec 31, 2014, at 2:38 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Privileged - Redacted

On Wed, Dec 31, 2014 at 2:48 PM, Alan Dershowitz <[redacted]> wrote:

Privileged - Redacted

Sent from my iPhone

On Dec 31, 2014, at 1:38 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Privileged - Redacted

On Wed, Dec 31, 2014 at 2:26 PM, Alan Dershowitz <[redacted]> wrote:

Privileged - Redacted

Sent from my iPhone

Begin forwarded message:

From: Josh Gerstein <[redacted]>
Date: December 31, 2014 at 1:03:19 PM EST

To: '[redacted]" <[redacted]
Subject: Filing in Epstein case

Hi Prof. Dershowitz:

I've been following the Jeffrey Epstein litigation saga on and off for some time.

When I checked the federal court docket last night, I came across the attached filing. It makes some serious allegations about you and several other people related to the case.

I wanted to make sure you had a copy of the filing and to ask if you have any comments on the allegations raised in it.

I'm planning to write a blog entry or story on this and will probably do so fairly soon since the filing is a public record at this point.

Anyway, if you want to respond, please let me know as soon as possible.

Thanks

--Josh Gerstein

Josh Gerstein
Reporter
POLITICO
[redacted](c)

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From: Thomas Jr., Landon [redacted]]
Sent: 1/9/2015 6:17:14 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?

But you cant just sit there taking punches like this -- especially wen the British tabs are driving this.

Maybe you go on British TV....

Call me any time.

On Fri, Jan 9, 2015 at 1:08 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Landon. [redacted] the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.

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--

Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon [redacted]
Sent: 1/9/2015 6:24:30 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

on phone now -- will call when i am done

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
number?

On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]n> wrote:
Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Michael Wolff [redacted]
Sent: 1/9/2015 6:33:09 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:

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From: Thomas Jr., Landon [redacted]
Sent: 1/9/2015 6:57:01 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

can talk now.[redacted]

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
number?

On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]> wrote:
Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?

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Landon Thomas, Jr.
Financial Reporter
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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Michael Wolff [redacted]
Sent: 1/10/2015 2:22:04 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Can you talk at noon? Probably need about 30 minutes. What is best number?

On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
anytime tomorw ok

On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
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From: Michael Wolff [redacted]
Sent: 1/10/2015 4:43:39 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Need 15

On Saturday, January 10, 2015, jeffrey E. <jeevacation@gmail.com> wrote:
now good?

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
Can you talk at noon? Probably need about 30 minutes. What is best number?

On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
anytime tomorw ok

On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m

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From: Michael Wolff <[redacted]>
Sent: Friday, January 16, 2015 2:54 PM
To: jeffrey E.
Subject: Re: thoughts

Importance: High

I don't think I would put her out there. It probably seems too self-serving. But let's discuss. I have an idea about how to best use. Do you have time to continue our conversation post-3:00 today or tomorrow?

On Fri, Jan 16, 2015 at 4:36 AM, jeffrey E. <jeevacation@gmail.com> wrote:

Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

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HOUSE_OVERSIGHT_022667

From: Thomas Jr., Landon <[redacted]>
Sent: Friday, January 16, 2015 7:45 PM
To: jeffrey E.
Subject: Re: How are you holding up?

Importance: High

I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted]. And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.

Does franc drama worry you? Am writing on it now...

On Fri, Jan 16, 2015 at 2:35 PM, jeffrey E. <jeevacation@gmail.com> wrote:

very well, my reputation has admittedly taken a hit . however, again, more calls re currency than i can handle. in addition I am considering a statement and positon that Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

On Fri, Jan 16, 2015 at 3:32 PM, Thomas Jr., Landon <[redacted]> wrote:

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon <[redacted]>
Sent: Friday, January 16, 2015 7:56 PM
To: jeffrey E.
Subject: Re: How are you holding up?

Importance: High

that is old news -- buy dollar and take a nap? Kind of like buying Apple?

On Fri, Jan 16, 2015 at 2:52 PM, jeffrey E. <jeevacation@gmail.com> wrote:
it is the begining world currencies are out of balance. brazil, etc

On Fri, Jan 16, 2015 at 3:45 PM, Thomas Jr., Landon <[redacted]> wrote:
I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted]. And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.

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On Fri, Jan 16, 2015 at 3:32 PM, Thomas Jr., Landon <[redacted]> wrote:

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Landon Thomas, Jr.

HOUSE_OVERSIGHT_022670

Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Kathy Ruemmler [redacted]
Sent: 1/30/2015 5:26:02 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Fwd:
Attachments: image006.png; image007.png; image005.jpg; image010.jpg; image001.jpg; image003.jpg; image008.png; image004.jpg; image002.jpg; image009.png

Importance: High

Did you see this? **Privileged - Redacted**

---------- Forwarded message ----------
From: <[redacted]>
Date: Jan 30, 2015 12:25 PM
Subject:
To: <[redacted]>
Cc:

POLITICS

Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal

Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.

posted on Jan. 28, 2015, at 10:53 p.m.

Ken Bensinger
BuzzFeed News Reporter

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Carlo Allegri / Reuters

Over roughly the past month, coverage of Bill Clinton's travels with financier and convicted sex offender Jeffrey Epstein have made their way from a thick stack of court documents into something approaching political mythology, propelled by a string of innuendo-laced reports hinting that the former president *must have been* in some way complicit when he voyaged with a billionaire known for preying on underage girls.

It's a story with plenty to gape at, from horrific and excruciatingly detailed allegations against Epstein to the frequent presence of a former president who was, after all, nearly chased from office for a (consensual) affair with an intern.

But sometimes stories that seem too good to be true — just might be. A detailed review by a team of BuzzFeed News reporters of more than 2,000 pages of pleadings, depositions, affidavits, police reports, flight logs, and other documents filed in state and federal court found that many of the most provocative allegations about Clinton have little to no factual foundation and are exaggerated at best; that the documents — which appear to be the source for nearly all current reporting on this subject — themselves never suggest that Clinton was doing more than using his wealthy friend as a kind of global taxi service; and that many of the most lurid insinuations have been floated without any visible support from verifiable information.

While it's still possible that some Rosetta stone of Clintonian depravity will surface from a pair of ongoing lawsuits involving Epstein, the fact that nothing even close to that has been dug up over the course of a half-dozen years of heated litigation should not be encouraging for Republican operatives and other Clinton critics hotly anticipating the very worst.

One sign that the connection is a bit weak: The lawyers who have used the Clinton link to help publicize their cases have been markedly vague on details.

When asked to present actual proof, Jack Scarola, the Florida attorney responsible for filing some of the most attention-grabbing documents that have come to light in recent weeks, warned darkly in an email of "extortionate threats, power, wealth or political pressure."

"The time will come when all your questions will be answered," said Scarola, who represents another trial attorney suing Epstein in Palm Beach County Court. "But that time is not now."

Unwilling to wait, perhaps, publications on both sides of the Atlantic have gleefully dipped into those documents to publish breathless descriptions of Epstein's "black book," which contains a host of Clinton phone numbers (along with just about every other powerful figure in the Western world); dissections of handwritten flight logs for the financier's private 727 aircraft that frequently capture Bubba at 30,000 feet; and extensive allegations from a woman, Virginia Roberts, who claims she was Epstein's sex slave as a teenager and whose recollection places the former commander-in-chief on "Orgy Island" in 2002 to participate in a sexual romp, possibly with women who were not yet of age.

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National Enquirer

Tellingly, many of those articles — which have notably increased in tempo in recent weeks following Roberts' late December accusation that noted attorney Alan Dershowitz was one of the men she was forced to have sex with — contain language underscoring the fact that none of this proves *anything*. "It should at this stage be stressed that the Mail has no evidence to corroborate this and other claims made by Virginia Roberts," the *Daily Mail* wrote in April. "Though her LinkedIn page claims a certificate in Swedish massage, there is no evidence that she ever actually treated Epstein to one," *Gawker* (in the most straightforward and clearest reporting on the documents to date) wrote last week. And the *National Enquirer* did not appear to rely on the court record for its conclusions, instead to the interpretation of an unnamed source who noted that "Bill's name is all over the legal papers, which are chock-full of sordid claims."

Clinton's discretion on matters of sexual restraint has attained permanent notoriety, so maybe it's natural to assume that particular leopard doesn't change his spots. But at this point, there is simply nothing to back those sordid claims up.

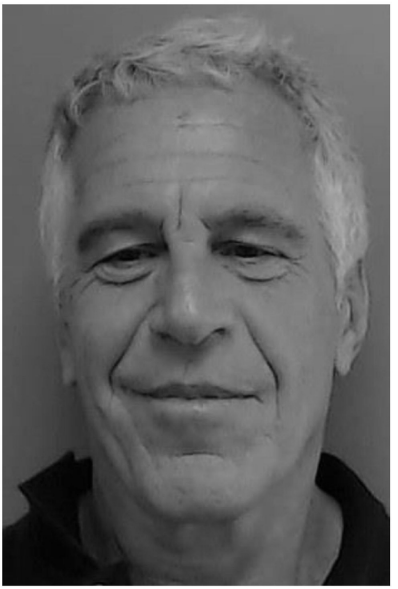
Here's what we **do** know:

Jeffrey Epstein is a secretive billionaire financier and Democratic donor who says he never attended college but whose "background is in physics." He owns properties in New York, Florida, New Mexico, London, and Paris and also owns an island in the U.S. Virgin Islands. He has at least two private jets, including the 727.

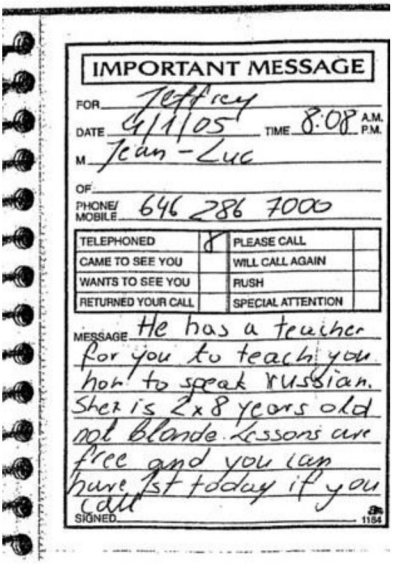
He has known Bill Clinton since about 1995, and his relationship with him grew stronger after he left office. There is no question they were friendly. Epstein's so-called "black book," which is less like something out of the Heidi Fleiss affair and more what most people would call a "phone directory," contains 21 numbers for getting in touch with Clinton, as well as emails and addresses.

But that 92-page directory also contains exactly the range of eye-poppingly famous and powerful contacts one might expect of an incredibly rich, connected person who owns Manhattan's largest private residence, from Tony Blair to Elie Wiesel to Courtney Love.

Epstein was long rumored to be a sexual libertine; "It is even said that he likes beautiful women as much as I do," real estate personality Donald Trump once said of his old friend. "And many of them are on the younger side."



Florida Dept of Law Enforcement



IMPORTANT MESSAGE

FOR Jeffrey

DATE 4/1/05 TIME 8:08 A.M. P.M.

M Jean-Luc

OF

PHONE/ MOBILE 646 286 7000

TELEPHONED	✓	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE He has a teacher for you to teach you how to speak russian. Shez is 2x8 years old not blonde. Lessons are free and you can have 1st today if you call

SIGNED 1184

Palm Beach County Court

Epstein, in his Florida sex offender photo; at right, a phone message to Epstein from a modeling agent offering Russian lessons from a "2×8" year old girl.

In 2006, that reputation caught up with him, when he was arrested by the Palm Beach Police on charges of sexually molesting numerous underage girls. Police reports in the court record show that detectives found Epstein regularly paid very young women to give him massages that he turned into sexual encounters. He allegedly had a preference for very young women, whom he carefully groomed into increasingly extreme situations, including what some, including Roberts, allege to be sexual slavery.

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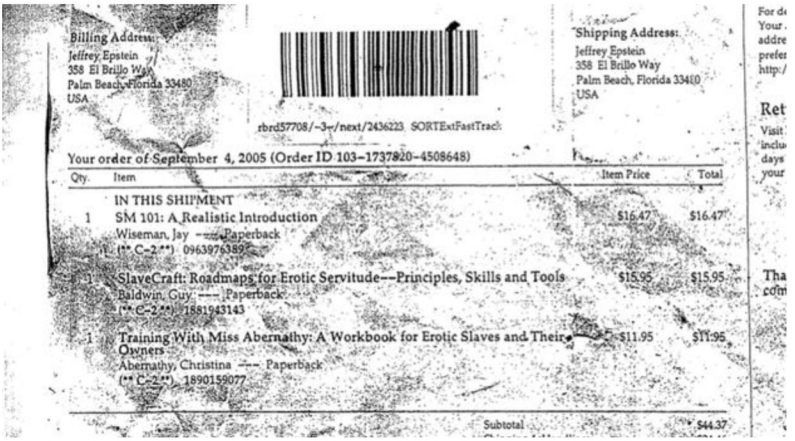
He avoided most of those charges as well as federal prosecution in late 2007 by agreeing to plead guilty in Florida court, a deal that Dershowitz, who was one of Epstein's lawyers, helped negotiate along with an all-star legal lineup that interestingly also included famed Clinton-hunter Ken Starr.

In the end, Epstein got 18 months in prison for a single count of soliciting an underage prostitute, of which he served 13 months. He is now a registered sex offender who lists his primary residence as the U.S. Virgin Islands.

In a pleading late last month in federal court, attorneys for Roberts allege that "Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution." Dershowitz has denied these charges vigorously, calling them "salacious and false" and, possibly more importantly, "completely irrelevant" in a Jan. 12 filing.

Despite what some called among the most exhaustive investigations in Palm Beach Police history — which dug up such evidence as an Amazon receipt for Epstein's purchase of titles including "Training With Miss Abernathy: A Workbook for Exotic Slaves and Their Owners" — there is nothing in the police record suggesting any other men were involved in Epstein's predatory behavior.



Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay --- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude--Principles, Skills and Tools Baldwin, Guy --- Paperback (** C-2 **) 1581943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina --- Paperback (** C-2 **) 1890159077	$11.95	$11.95
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Palm Beach County Court

The criminal case provoked numerous lawsuits from women alleging they were victims of Epstein's proclivities, followed by secret settlements with more than two dozen of them. One firm bringing some of those cases employed a young lawyer named Bradley Edwards, who managed some of the cases. In 2009, a founding partner at the firm, Scott Rothstein, fled the country before ultimately returning to plead guilty of running a $1.2 billion Ponzi scheme built around recruiting investors to buy stakes in litigation settlements that turned out to be phony.

As details of the fraud emerged, Epstein sued Rothstein and Edwards in Palm Beach County Court for racketeering, alleging, among other things, that they dangled Bill Clinton's association with Epstein as a lure to investors, implying that settlements would be fast and sizable. Epstein ultimately dropped his suit in 2012, but by that time, Edwards had countersued for malicious prosecution and abuse of process.

That case, along with a claim by Virginia Roberts against the federal government over the 2007 prosecution deal in district court (which she filed as a "Jane Doe" in 2008), are still pending and are the source of most of the scant information about Clinton that has appeared. Scarola, who in the past sued Chiquita over payments to violent leftist Colombian rebels and won a $1.45 billion verdict over Morgan Stanley (that was later overturned), is the lawyer bringing the suit in county court in West Palm Beach, while Paul Cassell, a former federal judge known for his critical take on mandatory-minimum sentences, mans the federal case four blocks away.

Neither Cassell nor Edwards responded to requests for comment.

It is primarily from pleadings in those cases that the press has been getting a glimpse inside the lifestyle of Epstein, and, by extension, Clinton. "Edwards had sound legal basis for believing former President Clinton had relevant and discoverable information," part of one pleading reads. Roberts, in her case, alleges that Epstein forced her "to be sexually exploited by Defendant's adult male peers,

including royalty, politicians, academicians, businessmen, and/or other professional and personal acquaintances," which, Edwards elsewhere claims, are "categories Clinton and acquaintances of Clinton fall into."

Police reports entered into the record go into stomach-wrenching detail about Epstein's alleged exploits with the girls and women he recruited and paid for massages that became sexual acts, and mention other women participating as well. Epstein's longtime friend, the socialite Ghislaine Maxwell, is accused of taking part, while his personal assistant, Sarah Kellen, is described procuring young woman for him.

But neither of those women has ever said a word about Clinton being involved. Maxwell, for her part, has never been deposed. She canceled a deposition in 2010, claiming she had to return to England indefinitely due to family illness, but was soon thereafter photographed by *Us Weekly* at Chelsea Clinton's wedding in Rhinebeck, New York.

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Us Weekly

For her part, Kellen, who won immunity from prosecution along with Epstein in 2007, did sit for a deposition, but repeatedly pleaded the Fifth, refusing to even say if she'd ever even met the former president.

Epstein's much-discussed flight logs show fairly conclusively that she has.

A review of the handwritten documents shows Clinton taking 13 trips in Epstein's specially outfitted Boeing 727, including a much-discussed trip to Africa with Kevin Spacey and Chris Tucker. In every single instance, the logs show, Kellen was also on the plane, as was Epstein. That may sound suspicious, except for the fact that Kellen has been described as Epstein's right hand, profoundly involved in his professional activities as well as personal ones. Indeed, Doug Band, Clinton's personal aide, was on all but one of the flights the former president took on Epstein's jet.

UNNT	RJTA		99	JG, GM, SK	1	6
RJTA	VHHH		100	JG, GM, SK, PRESIDENT BILL CLINTON, MOLL, DOUG BANKS, JANICE, JESSICA		6
VHHH	ZGSZ		101	SAME AS ABOVE		4
ZGSZ	WSSS		102	SAME AS ABOVE		2

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Palm Beach County Court

Among the other people who most frequently flew with Clinton are Maxwell and Adriana Ross (formerly Adriana Mucinska), another Epstein assistant and a former model. The logs also show him flying with former advisor Ira Magaziner, ex-Transportation Secretary Rodney Slater, and fashion model Naomi Campbell.

The pilots' documents also leave numerous and — understandably — intriguing questions unanswered: Clinton was on four flights with women identified as only "Janice" and "Jessica," who have not been identified; he once flew with a person identified only as "one female" and also, during part of the trip throughout Africa, a young woman named Chauntae Davies, who appears in Epstein's phone directly under the massage category and whose expertise in Swedish massage was described in *Gawker*'s story mentioning her last week. And because the entries are hand-written in a very cramped log form, it's impossible to know if important names ended up illegible or left out altogether, nor if there are other logs that have not been revealed.

But based on what's in the court files, there are no further clues about those flights, other than the testimony and public statements of Roberts, who has described the airplane as a kind of high-altitude Gomorrah. What is on the record is a deposition of Larry Visoski, one of Epstein's former pilots, who recalls having Clinton on his plane as many as 20 times. When asked, "Do you remember him being on the airplane with younger girls?" Visoski replies, simply, "No."

Clinton flew literally around the world with Epstein, traveling from New York to London, to Hong Kong, Singapore, Thailand, Morocco, Portugal, Russia, and throughout Africa. In almost every case, according to cross-referenced information on his speaking engagements, Clinton was apparently traveling for professional reasons, and, according to the logs, he never flew with his wealthy friend anywhere near the U.S. Virgin Islands.

That does little to bolster statements by Roberts, who in a 2011 conversation with her lawyers (which both *New York Post*'s *Page Six* and *Radar Online* described as an "interview") claimed Clinton traveled to Epstein's infamous retreat on Little St. James Island in 2002.

Earlier this month, it was reported that Roberts is writing a "tell-all" memoir about her experiences. In a sworn affidavit filed in court last week, she claimed to have had sex with Epstein, Dershowitz, England's Prince Andrew, and several other men on numerous occasions, and portrayed a three-year period ending in 2002 when Epstein passed her off to his friends continually. But, she added, "I have never had sexual relations with Clinton, nor have I claimed to have had such relations. I have never seen him have sexual relations with anyone."

tell the truth about everything because that will help prevent future similar abuse.

53. I have seen reports saying or implying that I had sex with former President Bill Clinton on Little Saint James Island. Former President Bill Clinton was present on the Island at a time when I was also present on the Island, but I have never had sexual relations with Clinton, nor have I ever claimed to have had such relations. I have never seen him have sexual relations with anyone.

54. I now understand that Epstein reached a non-prosecution agreement with the

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http://U.S. District Court

Intensive coverage prompted by the court filings has hinted that Clinton abruptly ceased his flying with Epstein in 2005, not terribly long before he was arrested, "perhaps because of events related to Epstein's sexual abuse of children." The implication is that Clinton may have known trouble of the worst kind was coming and decided to get out while he could. In fact, the logs show all of Clinton's flights came in 2002 and 2003, with not a single appearance aloft recorded in 2004 or 2005.

The closest potential link to Clinton in the period closer to Epstein's fall, the public record suggests, comes from one of his longtime confidants, former Treasury Secretary Larry Summers.

The flight logs indicate Summers flew on Epstein's jet as far back as 1998, but also on April 15, 2004, September 14, 2005, and December 21, 2005. The final trip came 10 days after Summers got married, and the log for the flight — from Bedford, Massachusetts, to the Virgin Islands — shows what appears to be his new bride on board, as well as Ghislaine Maxwell, but not Epstein.

21	"	N904JE	TCB	BED	1852	GM	LV
21	"	"	BED	TISJ	1853	GM, LARRY + LISA SUMMERS	LV
2006 NOV 15	"	"	TISJ	BED	1854	JG, NM	LV

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Palm Beach County Court

Epstein was a significant donor to Harvard University, of which Summers was president at the time. According to a spokesperson for Summers, on a few occasions when Epstein was flying to where Summers was also traveling, he accepted rides on the billionaire's jet.

Attorneys in the two cases have attempted to get the court to permit discovery from Clinton himself, but have been stymied by motions from Epstein's lawyers. Court records show they have also tried unsuccessfully to depose Donald Trump, former New Mexico Gov. Bill Richardson, former Sony Music head Tommy Mottola, and magician David Copperfield. Notably, a list of 73 proposed witnesses in Roberts' trial does not include Clinton.

The tale of Epstein and his sexual activities is undoubtedly a fascinating, and harrowing, one. But with the star witness in one case swearing under oath that she has no such evidence, and everyone else in a position to know keeping their mouths firmly shut, it is at this point extremely difficult to draw even a hazy, crooked, dotted line between Epstein's depredations, in the bedroom or aloft, and William Jefferson Clinton.

BuzzFeed News reporters Alex Campbell, Kyle Blaine, and Megan Apper contributed to this report.

Kathryn H. Ruemmler

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Fax: [redacted]
Email: [redacted]
http://www.lw.com

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Latham & Watkins LLP

From: Kathy Ruemmler [redacted]
Sent: 1/30/2015 7:05:49 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:
Attachments: image010.jpg; image006.png; image002.jpg; image008.png; image009.png; image007.png; image004.jpg; image005.jpg; image003.jpg; image001.jpg

Importance: High

[redacted]

On Jan 30, 2015 2:04 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
number?

On Fri, Jan 30, 2015 at 1:26 PM, Kathy Ruemmler <[redacted]> wrote:

Did you see this? Privileged - Redacted

---------- Forwarded message ----------
From: <[redacted]>
Date: Jan 30, 2015 12:25 PM
Subject:
To: <[redacted]>
Cc:

POLITICS

Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal

Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.

posted on Jan. 28, 2015, at 10:53 p.m.

Ken Bensinger

BuzzFeed News Reporter

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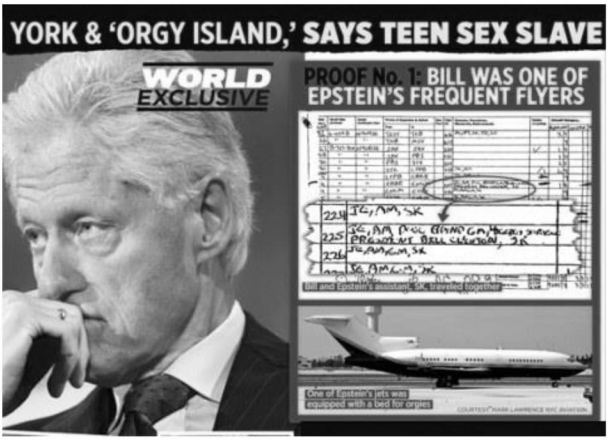

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National Enquirer

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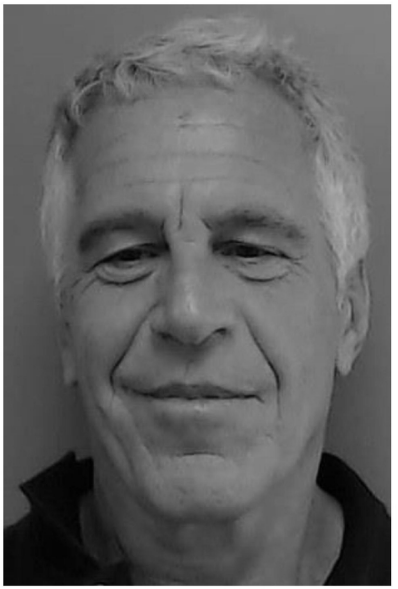

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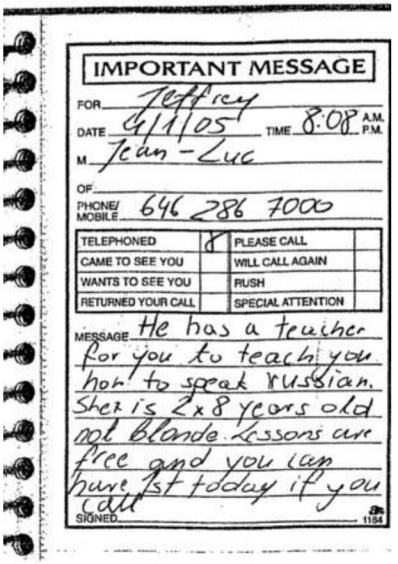

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DATE 4/1/05 TIME 8:08 A.M. P.M.

M. Jean-Luc

OF

PHONE/ MOBILE 646 286 7000

TELEPHONED	8	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
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MESSAGE He has a teacher for you to teach you how to speak russian. Sher is 2x8 years old not blonde. Lessons are free and you can have 1st today if you call

SIGNED 1184

Palm Beach County Court

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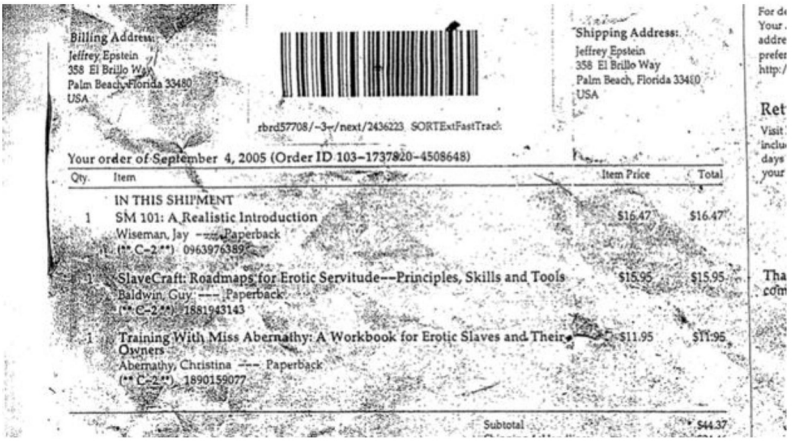

Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

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Palm Beach County Court

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Us Weekly

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UNNT	RJTA		99	JE, GM, SK	1/	6
RJTA	VHHH		100	JE, GM, SK, PRESIDENT BILL CLINTON, MERKL, DOUG BANDS, JANEW, JESSICA	/1	6
VHHH	ZGSZ		101	SAME AS ABOVE		4
ZGSZ	WSSS		102	SAME AS ABOVE		2

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Among the other people who most frequently flew with Clinton are Maxwell and Adriana Ross (formerly Adriana Mucinska), another Epstein assistant and a former model. The logs also show him flying with former advisor Ira Magaziner, ex-Transportation Secretary Rodney Slater, and fashion model Naomi Campbell.

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The tale of Epstein and his sexual activities is undoubtedly a fascinating, and harrowing, one. But with the star witness in one case swearing under oath that she has no such evidence, and everyone else in a position to know keeping their mouths firmly shut, it is at this point extremely difficult to draw even a hazy, crooked, dotted line between Epstein's depredations, in the bedroom or aloft, and William Jefferson Clinton.

BuzzFeed News reporters Alex Campbell, Kyle Blaine, and Megan Apper contributed to this report.

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From: Kathy Ruemmler [redacted]
Sent: 1/31/2015 2:46:14 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:
Attachments: image010.jpg; image005.jpg; image009.png; image004.jpg; image002.jpg; image007.png; image001.jpg; image008.png; image003.jpg; image006.png

Importance: High

Well, I think, but not because of me. The existential crisis thing is not a PMS or menopausal pose.

On Jan 30, 2015 9:16 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
how did musk call go?

On Fri, Jan 30, 2015 at 2:05 PM, Kathy Ruemmler <[redacted]> wrote:
[redacted]

On Jan 30, 2015 2:04 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
number?

On Fri, Jan 30, 2015 at 1:26 PM, Kathy Ruemmler [redacted]> wrote:
Did you see this? Privileged - Redacted

---------- Forwarded message ----------
From: <[redacted]>
Date: Jan 30, 2015 12:25 PM
Subject:
To: <[redacted]>
Cc:

POLITICS

Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal

Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.

posted on Jan. 28, 2015, at 10:53 p.m.

Ken Bensinger

BuzzFeed News Reporter

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Carlo Allegri / Reuters

Over roughly the past month, coverage of Bill Clinton's travels with financier and convicted sex offender Jeffrey Epstein have made their way from a thick stack of court documents into something approaching political mythology, propelled by a string of innuendo-laced reports hinting that the former president *must have been* in some way complicit when he voyaged with a billionaire known for preying on underage girls.

It's a story with plenty to gape at, from horrific and excruciatingly detailed allegations against Epstein to the frequent presence of a former president who was, after all, nearly chased from office for a (consensual) affair with an intern.

But sometimes stories that seem too good to be true — just might be. A detailed review by a team of BuzzFeed News reporters of more than 2,000 pages of pleadings, depositions, affidavits, police reports, flight logs, and other documents filed in state and federal court found that many of the most provocative allegations about Clinton have little to no factual foundation and are exaggerated at best; that the documents — which appear to be the source for nearly all current reporting on this subject — themselves never suggest that Clinton was doing more than using his wealthy friend as a kind of global taxi service; and that many of the most lurid insinuations have been floated without any visible support from verifiable information.

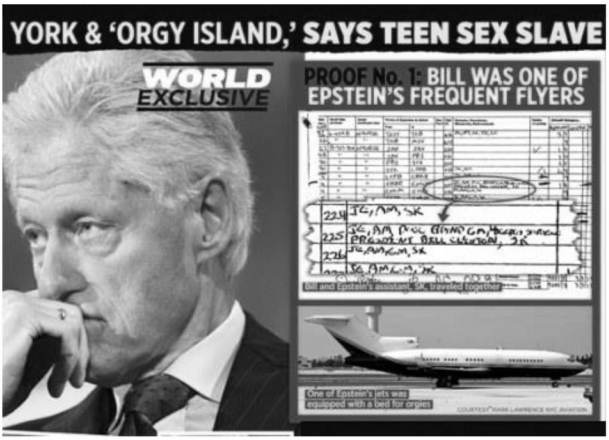
While it's still possible that some Rosetta stone of Clintonian depravity will surface from a pair of ongoing lawsuits involving Epstein, the fact that nothing even close to that has been dug up over the course of a half-dozen years of heated litigation should not be encouraging for Republican operatives and other Clinton critics hotly anticipating the very worst.

One sign that the connection is a bit weak: The lawyers who have used the Clinton link to help publicize their cases have been markedly vague on details.

When asked to present actual proof, Jack Scarola, the Florida attorney responsible for filing some of the most attention-grabbing documents that have come to light in recent weeks, warned darkly in an email of "extortionate threats, power, wealth or political pressure."

"The time will come when all your questions will be answered," said Scarola, who represents another trial attorney suing Epstein in Palm Beach County Court. "But that time is not now."

Unwilling to wait, perhaps, publications on both sides of the Atlantic have gleefully dipped into those documents to publish breathless descriptions of Epstein's "black book," which contains a host of Clinton phone numbers (along with just about every other powerful figure in the Western world); dissections of handwritten flight logs for the financier's private 727 aircraft that frequently capture Bubba at 30,000 feet; and extensive allegations from a woman, Virginia Roberts, who claims she was Epstein's sex slave as a teenager and whose recollection places the former commander-in-chief on "Orgy Island" in 2002 to participate in a sexual romp, possibly with women who were not yet of age.



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National Enquirer

Tellingly, many of those articles — which have notably increased in tempo in recent weeks following Roberts' late December accusation that noted attorney Alan Dershowitz was one of the men she was forced to have sex with — contain language underscoring the fact that none of this proves *anything*. "It should at this stage be stressed that the Mail has no evidence to corroborate this and other claims made by Virginia Roberts," the *Daily Mail* wrote in April. "Though her LinkedIn page claims a certificate in Swedish massage, there is no evidence that she ever actually treated Epstein to one," *Gawker* (in the most straightforward and clearest reporting on the documents to date) wrote last week. And the *National Enquirer* did not appear to rely on the court record for its conclusions, instead to the interpretation of an unnamed source who noted that "Bill's name is all over the legal papers, which are chock-full of sordid claims."

Clinton's discretion on matters of sexual restraint has attained permanent notoriety, so maybe it's natural to assume that particular leopard doesn't change his spots. But at this point, there is simply nothing to back those sordid claims up.

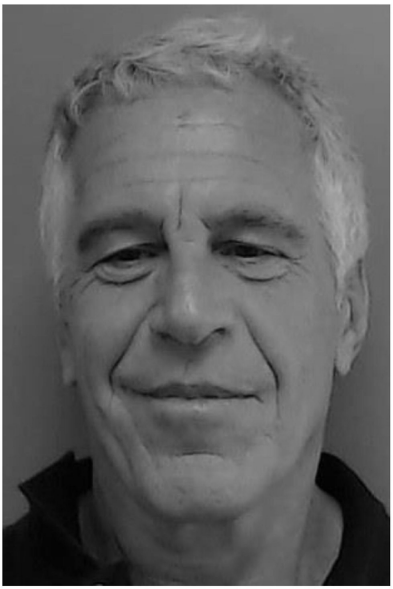
Here's what we **do** know:

Jeffrey Epstein is a secretive billionaire financier and Democratic donor who says he never attended college but whose "background is in physics." He owns properties in New York, Florida, New Mexico, London, and Paris and also owns an island in the U.S. Virgin Islands. He has at least two private jets, including the 727.

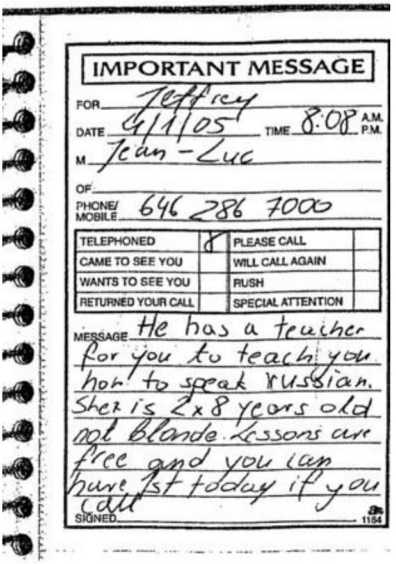
He has known Bill Clinton since about 1995, and his relationship with him grew stronger after he left office. There is no question they were friendly. Epstein's so-called "black book," which is less like something out of the Heidi Fleiss affair and more what most people would call a "phone directory," contains 21 numbers for getting in touch with Clinton, as well as emails and addresses.

But that 92-page directory also contains exactly the range of eye-poppingly famous and powerful contacts one might expect of an incredibly rich, connected person who owns Manhattan's largest private residence, from Tony Blair to Elie Wiesel to Courtney Love.

Epstein was long rumored to be a sexual libertine; "It is even said that he likes beautiful women as much as I do," real estate personality Donald Trump once said of his old friend. "And many of them are on the younger side."



Florida Dept of Law Enforcement



IMPORTANT MESSAGE

FOR Jeffrey

DATE 4/1/05 TIME 8:08 A.M. P.M.

M Jean-Luc

OF

PHONE/ MOBILE 646 286 7000

TELEPHONED	✓	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE He has a teacher for you to teach you how to speak russian. Sher is 2x8 years old not blonde. Lessons are free and you can have 1st today if you call

SIGNED 1154

Palm Beach County Court

Epstein, in his Florida sex offender photo; at right, a phone message to Epstein from a modeling agent offering Russian lessons from a "2×8" year old girl.

In 2006, that reputation caught up with him, when he was arrested by the Palm Beach Police on charges of sexually molesting numerous underage girls. Police reports in the court record show that detectives found Epstein regularly paid very young women to give him massages that he turned into sexual encounters. He allegedly had a preference for very young women, whom he carefully groomed into increasingly extreme situations, including what some, including Roberts, allege to be sexual slavery.

In total, 40 women were identified as possible victims of sexual abuse by Epstein, many of them teenagers at the time, including some younger than 14 years old. Epstein was originally charged with a variety of crimes, including sexual assault, rape, and witness tampering.

He avoided most of those charges as well as federal prosecution in late 2007 by agreeing to plead guilty in Florida court, a deal that Dershowitz, who was one of Epstein's lawyers, helped negotiate along with an all-star legal lineup that interestingly also included famed Clinton-hunter Ken Starr.

In the end, Epstein got 18 months in prison for a single count of soliciting an underage prostitute, of which he served 13 months. He is now a registered sex offender who lists his primary residence as the U.S. Virgin Islands.

In a pleading late last month in federal court, attorneys for Roberts allege that "Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution." Dershowitz has denied these charges vigorously, calling them "salacious and false" and, possibly more importantly, "completely irrelevant" in a Jan. 12 filing.

Despite what some called among the most exhaustive investigations in Palm Beach Police history — which dug up such evidence as an Amazon receipt for Epstein's purchase of titles including "Training With Miss Abernathy: A Workbook for Exotic Slaves and Their Owners" — there is nothing in the police record suggesting any other men were involved in Epstein's predatory behavior.

Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay --- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude--Principles, Skills and Tools Baldwin, Guy --- Paperback (** C-2 **) 1881943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina --- Paperback (** C-2 **) 1890159077	$11.95	$11.95
	Subtotal		$44.37

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It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional fabulously rich women). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's finance ministers and foremost economists.

Epstein's apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class.

Epstein's way to riches was to become a canny student of such wealth as it's grown to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

"In the past, only governments had this kind of money," says Epstein making something of a pedagogical point, "money of a reality altering scale.

In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his

most dogged and hyperbolic antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious "think Yiddish" point of view prevails).

Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet Gates' public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were out in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: audible disbelief (everybody makes their own particular odd noise). Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his floating residences—the ranch in New Mexico, the vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities—in some sense not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Once, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have yet beaten a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, TK, TK, TK.

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of East, entertained that evening a delegation from Qatar, including **Sheikh Hamad**, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused demeanor, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland. (Epstein: "You actually believe he was getting fucked?" Weingarten: "From minute one. I'm not a virgin. But his was the worst I've ever seen. It was like an assassination.)

After a short discussion of the Qartarian's visit—Epstein is serving the chocolate, made from pistachios grown on the Shakes farm—and speculation about who actually controls ISIS, I am asked to leave the room.

Twenty minutes later, after what ever business has been transacted or particular confidences, shared I am asked back in.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I find that question as mysterious as you do," says Weingarten.

Shortly after Weingarten leaves, Epstein tells me that Eric Holder will resign by the end of the week—which he does.

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brook Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Shakes chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in what in some dramatic understatement, "you are going to have some low quality characters playing the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

MORE…TK

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because, no matter their public bows to modern manners, they simply don't care that he offends every aspect of feminist sensibility

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In Epstein's Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (At the same time, Epstein is a major supporter of cancer research and the elephant, he says, is also a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

Epstein is the Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional bona fides which makes me in some sense one of the few independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. (If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.3 million. Alas, I did not.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. In some sense, Epstein is just one version, picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale. He was born in 1953 in Coney Island. His father worked for the city's Parks Department. His mother was a housewife. He has a younger brother, Mark.

Epstein was distinguished by little other than his math talents. The captain of the math team at Lafayette High school in Bensonhurst, he goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled not long ago as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the his country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than others being quickly transformed.

He moves into a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who doesn't drink or take drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to

math. In a sense I didn't really make money as much as I did create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I wanted sex. I liked women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the 1980s rich-family soap operas, Dallas and Falcon Crest.

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion, at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the richest families in Europe.

"I don't take it seriously," Epstein recounts. "I'm not caught up in it. I'm not trying to make a billion dollars. There is no ultimate goal. Or its just to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events are serendipitous, I wouldn't decided where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just relocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. In essence, the formulation is, how can a person have enough money to merit increasing attention, but no clear way of having gotten it. Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to imagine the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth.

In essence, as he becomes more public the response to this, as a function of envy and the media's need for definition, is "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant.) But the characterization persist: if it's not clear, it must be

murky. Sure, Goldman Sachs partners and tech fortunes, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be an understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "For you have no idea," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich, is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research—ultimately he will donate $30

million to Harvard for a theoretical physics research center—and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles, New York's by Landon Thomas, pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for

Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, well known for offering an operatic view about her reporting exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the mother of one of the massage parlor girls who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl, Saige Gonzales, who then supplies names of other girls. Some of whom are found to be younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow, nobody at this point alleges that he did anything to them.)

Epstein, tipped to the investigation, vastly raises the stakes, calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case. Dershowitz brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of gorgeous retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the exploited and powerless.

Still, with a critical eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a prostitution charge in Florida, nor in most places (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine).

In fact, Saige Gonzales told the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house.

The local sex crimes prosecutor, Lana Belhalevic, interviews the girls and determines that the offense is solely related to prostitution—that there are no innocent victims.

Dershowitz rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel

interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers an ass-backwards sort of deal in which Epstein's lawyers have to go to the Palm Beach authorities and get them to agree to charge him with an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree also to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

This hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with

Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (and a further two and half years on a related gun charge). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

As the most vocal of the accusers, Roberts, with the Daily Mail being her prime outlet, emerges now with what is billed as a memoir of her "sex slavery" with Epstein, written ten years after the fact. She names a number of people as being at Epstein's Island home, including Clinton and Al Gore and his wife, who Epstein's lawyers insists were never there—proof available through secret service records.

The FBI is now arguing that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms, ever more incredulous and apoplectic that Epstein not only walks free but prospers too. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world; someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus is to get married, he said he would rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, inevitably, a Gatsby-like story. But Gatsby in New York Post and Daily Mail parlance would likely be a freaky financier too.

And it's a story about the limitation of journalism, in which the most compelling parts of the story—it would take a long running cable show to do justice to the meaning of Epstein's ambitions and impulses—need to be sacrificed for not just moral certainty but for a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house.

It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional fabulously rich women). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's finance ministers and foremost economists.

Epstein's apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class.

Epstein's way to riches was to become a canny student of such wealth as it's grown to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

"In the past, only governments had this kind of money," says Epstein making something of a pedagogical point, "money of a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy,

merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most dogged and hyperbolic antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious "think Yiddish" point of view prevails).

Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet Gates' public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had

received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti-royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were out in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same:

audible disbelief (everybody makes their own particular odd noise). Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his floating residences—the ranch in New Mexico, the vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities—in some sense not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Once, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's

effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have yet beaten a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, TK, TK, TK.

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of East, entertained that evening a delegation from Qatar, including **Sheikh Hamad**, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused demeanor, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland. (Epstein: "You actually believe he was getting fucked?" Weingarten: "From minute one. I'm not a virgin. But his was the worst I've ever seen. It was like an assassination.)

After a short discussion of the Qartarian's visit—Epstein is serving the chocolate, made from pistachios grown on the Shakes farm—and speculation about who actually controls ISIS, I am asked to leave the room. Twenty minutes later, after what ever business has been transacted or particular confidences, shared I am asked back in.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I find that question as mysterious as you do," says Weingarten.

Shortly after Weingarten leaves, Epstein tells me that Eric Holder will resign by the end of the week—which he does.

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brook Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Shakes chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in what in some dramatic understatement, "you are going to have some low quality characters playing the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

MORE…TK

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because, no matter their public bows to modern manners, they simply don't care that he offends every aspect of feminist sensibility

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In Epstein's Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (At the same time, Epstein is a major supporter of cancer research and the elephant, he says, is also a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

Epstein is the Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my

situation, I have none of that. I have no institutional bona fides which makes me in some sense one of the few independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. (If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.3 million. Alas, I did not.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. In some sense, Epstein is just one version, picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale. He was born in 1953 in Coney Island. His father worked for the city's Parks Department. His mother was a housewife. He has a younger brother, Mark.

Epstein was distinguished by little other than his math talents. The captain of the math team at Lafayette High school in Bensonhurst, he goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled not long ago as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with

Sulzberger in his wood paneled station wagon to the his country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than others being quickly transformed.

He moves into a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who doesn't drink or take drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I did create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I wanted sex. I liked women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the 1980s rich-family soap operas, Dallas and Falcon Crest.

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion, at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the richest families in Europe.

"I don't take it seriously," Epstein recounts. "I'm not caught up in it. I'm not trying to make a billion dollars. There is no ultimate goal. Or its just to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events are serendipitous, I wouldn't decided where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just relocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. In essence, the formulation is, how can a person have enough money to merit increasing attention, but no clear way of having gotten it. Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to imagine the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth.

In essence, as he becomes more public the response to this, as a function of envy and the media's need for definition, is "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech fortunes, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped

by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be an understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "For you have no idea," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich, is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research—ultimately he will donate $30 million to Harvard for a theoretical physics research center—and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to

arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles, New York's by Landon Thomas, pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, well known for offering an operatic view about her reporting exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the mother of one of the massage parlor girls who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl, Saige Gonzales, who then supplies names of other girls. Some of whom are found to be younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow, nobody at this point alleges that he did anything to them.)

Epstein, tipped to the investigation, vastly raises the stakes, calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case. Dershowitz brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of gorgeous retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the exploited and powerless.

Still, with a critical eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a prostitution charge in Florida, nor in most places (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine).

In fact, Saige Gonzales told the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house.

The local sex crimes prosecutor, Lana Belhalevic, interviews the girls and determines that the offense is solely related to prostitution—that there are no innocent victims.

Dershowitz rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers an ass-backwards sort of deal in which Epstein's lawyers have to go to the Palm Beach authorities and get them to agree to charge him with an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree also to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

This hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (and a further two and half years on a related gun charge). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice

Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

As the most vocal of the accusers, Roberts, with the Daily Mail being her prime outlet, emerges now with what is billed as a memoir of her "sex slavery" with Epstein, written ten years after the fact. She names a number of people as being at Epstein's Island home, including Clinton and Al Gore and his wife, who Epstein's lawyers insists were never there—proof available through secret service records.

The FBI is now arguing that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms, ever more incredulous and apoplectic that Epstein not only walks free but prospers too.

Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world; someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus is to get married, he said he would rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, inevitably, a Gatsby-like story. But Gatsby in New York Post and Daily Mail parlance would likely be a freaky financier too.

And it's a story about the limitation of journalism, in which the most compelling parts of the story—it would take a long running cable show to do justice to the meaning of Epstein's ambitions and impulses—need to be sacrificed for not just moral certainty but for a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house.

It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's finance ministers and foremost economists.

Epstein's apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class. He has quite turned himself into a hyperbolic representations of this wealth and hence, in a way, become accountable for it.

His own way to riches was to become a canny student of the new money, as well as one of its large than life characters, as it grew to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

"In the past, only governments had this kind of money," says Epstein conversationally, but making a pedagogical point, "money of a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the

target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most frothing-at-the-mouth antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious "think Yiddish" point of view prevails).

Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet Gates' public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison and relative peace, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti-royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were done in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: a gasp. Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Not long ago, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This

method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful continued to beat a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, Mort Zuckerman, and Peter Thiel [TK].

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of east, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein and is one of attorney general Eric Holder's closest friends. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there's a discussion of the Qartarian's visit—Epstein is serving chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh's chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein. [TK Ruemmler quotes…]

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.

Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do

with trying to "describe cancer mathematically." Epstein preempts Nowak's explanation (which I'm not quite getting): "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail."

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who, in his Baron Fund, has $26 billion under management. Then Josh Harris the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because—no matter their public bows to modern manners—they simply don't care that he offends every aspect of reconstructed gender and political sensibilities. In private, it remains a man's world—a rich man's world.

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time,

run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

In this view, Epstein is a sort of Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. ((If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $TK million. Alas, I did not invest.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein is just one version, albeit picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father works for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, goes on to Cooper Union where the tuition is free. He drops

out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility than has ever before existed. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than so many others who are also being quickly transformed.

He moves into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was he says, as a fond memory, full of "actresses, models, and euro trash." (It would shortly

become the Studio 54 era, where Epstein, who has never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest (plot lines from which Epstein might easily step).

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion (he befriends the show's star, Robin Leach), at English shooting parties at country estates with

Saturday night black tie dinners, where he's meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. How can a person have enough money to merit increasing attention, but no clear way of having gotten it? Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's

helping them to navigate the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth. If they had big dreams before, it's nothing to what they can have now.

In essence, as Epstein becomes more of a public figure the response to this description of his livelihood, is, in the media and in high social circles, "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be a big understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. ("I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people.")

The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible or supportable)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, often operatic about her journalistic exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, and without the remotest sense of observance or propriety—as though a kind of cultural autism—has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the stepmother of one of the massage parlor girls, identified as "SG" in court documents, who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police

interview the girl who then supplies names of other girls. Some of whom are younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleges anything more than Epstein masturbating.)

Epstein vastly raises the stakes by calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case, brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of young and gorgeous female retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the seemingly exploited and powerless.

Still, with a cold eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a solicitation charge in Florida, nor in most places (in New York, for instance, at this time soliciting

sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine—the law has recently been changed to TK).

In fact, the "SG" tells the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house (other girls will say they knew this is what they had to say, nevertheless not stopping them from saying it).

The local sex crimes prosecutor, Lana Belhalevic, interviews all the girls and determines that the offense is solely related to prostitution—that there are no real victims here.

Dershowitz, with chest pounding bravado, rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to

prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers what seems to be unprecedented deal in which Epstein's lawyers (not federal prosecutors, but Epstein's lawyers, in some ultimate act of self incrimination) have to go to the Palm Beach authorities and convince them to up the charges to an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, in a unique, if not unprecedented arrangement, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

Jail hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (it is not so much a journal as a list of phone numbers, which were apparently collected or saved by Rod Rodriguez; all of this material was subsequently included in a court filing by Edwards). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

Indeed, Roberts, with the Daily Mail being her prime outlet, emerges as the most vocal accuser—and, in fact, the some total of the current story and attention.

That is, there is no story without her and what is being billed as her memoir of her "sex slavery" with Epstein, written ten years after the fact. Along with the Dershowitz and Prince Andrew charges, Roberts puts, with rather some narrative detail, both Clinton and Al and Tipper Gore on the island—and in fact Clinton, apparently with the acquiescence of the Secret Service, flying in a helicopter piloted by Epstein's girlfriend, an amateur pilot. Epstein's lawyers say that not only have Clinton and the Gores never been to the Epstein Island, but that there is easy proof of this in secret service records, which would seem to make the memoir opportunistic or hallucinatory fiction.

The FBI, in a recent filing, has argued that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new stories or even new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007. It's as though a kind of ground-hog day of moral opprobrium, a desire to repeat and to savor a new the old details.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms ever more

incredulous and apoplectic that Epstein not only walks free but prospers too.

Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus would be to get married, he said he'd rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, of course, a Gatsby-like tale: An enigmatic, and strangely appealing figure, able to invent and inhabit his own world is a mystery to try to decipher. Of course Gatsby in New York Post and Daily Mail parlance would likely be just a freaky financier too.

And this story is, in its way, about the limitation of journalism, in which the most compelling parts of the tale—Epstein's ambitions and impulses would be well suited to a long running cable drama—need to be sacrificed not just to moral certainty but to a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house soon.

From: Martin Weinberg [[redacted]]
Sent: 4/22/2015 7:03:52 PM
To: Jeffrey Epstein [jeevacation@gmail.com]; Kathy Ruemmler [[redacted]]
CC: Martin Weinberg [[redacted]]
Subject: ATTORNEY-CLIENT PRIVILEGE

Importance: High

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted]

[redacted] cell

==========

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information from the Law Office of

Martin G. Weinberg, P.C.,

and may be privileged. The

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that any disclosure, copying,

distribution, or use of the

contents of this message is

prohibited.

--- On Wed, 4/22/15, Hill, James E. <[redacted]> wrote:

> From: Hill, James E. [redacted]
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: [redacted]
> Date: Wednesday, April 22, 2015, 1:57 PM
> #yiv0232406113
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> div.yiv0232406113MsoNormal
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> span.yiv0232406113MsoHyperlink
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> #yiv0232406113 a:visited, #yiv0232406113
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> _filtered #yiv0232406113 {font-family:Wingdings;}
> #yiv0232406113 ol
> {margin-bottom:0in;}
> #yiv0232406113 ul
> {margin-bottom:0in;}
> #yiv0232406113 Marty: With the understanding
> that we have not yet made determinations about what will or
> will not be included in our broadcast, here are the bullet
> points of the principal allegations Ms. [redacted]
> raised in the ABC interview regarding Mr. Epstein. I'm
> available on cell [redacted] if you wish to discuss.
> We'd ask for your response as soon as possible – best if
> by close of business Friday. Thanks. And I'm
> always available to talk to you if you wish to communicate
> with us. ·
> She says in summer of 1999 when she was
> 15 - Ghislaine Maxwell approached and asked her if she was
> interested in a job as a masseuse·
> She says she was later (that same day)
> driven by her father to Epstein's Palm Beach residence,
> where she massaged Epstein with Maxwell's guidance, and
> then she says she was made to have sex, to include
> intercourse, with Epstein. At conclusion she says she
> was paid $200 and driven home by a butler.·
> She says she quit her job and went to
> work for Epstein within a couple of weeks of the first
> encounter·
> She says Epstein always knew how old
> she was and says specifically that she, Epstein and Maxwell
> celebrated [redacted] 16th b-day together·
> She says Epstein paid her for the
> encounters and for her apartment and car·
> She says she would be expected to have
> sexual relations with Epstein up to several times a
> day·
> She says there was an uncountable
> number of other girls in similar situation to her, some as
> young as 12·
> She says she was given money by Epstein
> to go out and recruit other young girls for him.·
> She says that while she was free to
> come and go – she felt like she was under his control and
> she didn't want to disappoint Epstein.·
> She says Epstein required her, and paid
> her, to have sex with many of his friends. ·
> She says these people included
> politicians, royalty, educators·
> She says she had sex -or sexual
> activities - with Prince Andrew on three occasions – at
> the instruction of Epstein ·
> She says Epstein paid her $15,000 after
> the 1st of the three alleged encounters with
> Prince Andrew·
> She says that Epstein showed her a
> video room in his NY home which had monitors showing cameras
> in many locations in the home·
> She suggests Epstein made videos of
> underage girls with other people for purposes of potential

> blackmail ·
> She says that Epstein liked her to
> dress up in outfits, including bondage and schoolgirl
> outfits·
> She says she met Bill Clinton on
> Epstein's island in the USVI. She does not specify a
> date but says she is 100% sure it was Clinton and it was on
> the island. She says she ate dinner with Epstein and
> Clinton but alleges nothing further regarding Clinton.·
> She says one person - who she
> wouldn't name - that Epstein loaned her out to -
> physically assaulted and raped her. She says this
> happened on Epstein's island, and that she had been sent
> by Epstein - alone -to meet this person . She says she
> screamed but no one came to her aid. She says she feared
> for her life. She says she told Epstein about the
> alleged beating and rape afterwards and she said he didn't
> care.·
> She says Epstein and Maxwell asked her
> to have a child for them and to sign a document signing away
> the rights to the child in the event that she and Epstein
> had a falling out. She says she refused this
> request.·
> She says Epstein has a sick problem, is
> a pedophile, a dangerous man who should not be walking
> free -----Original
> Message-----
> From: Martin Weinberg
> [redacted]
> Sent: Wednesday,
> April 22, 2015 1:44 PM
> To: Hill, James E.
> Cc: Martin Weinberg
> Subject:
> Re: inquiry from ABC News re Jeffrey Epstein James, just confirming
> that you are sending me the bulletpoints from the interview
> you are asking about, thanksMartyMartin G. Weinberg,
> Esq. 20 Park Plaza, Suite
> 1000 Boston, MA 02116 [redacted] [redacted] cell ========== This
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> contains information from the Law
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> and may be privileged. The
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> is prohibited. ----------On Tue, 4/21/15, Hill,
> James E. <[redacted]>
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: "[redacted]"
> [redacted]
> [redacted]
> [redacted],
> [redacted]
> [redacted] Date: Tuesday, April 21,
> 2015, 4:36 PM
> Greetings.
> This is James Hill
> of ABC News. I write to you regarding Jeffrey Epstein - and
> your representation of him in the CVRA case in which he
> is an intervener. ABC News has recently conducted an on-camera
> interview with [redacted] (formerly known as Jane
> Doe #3), portions of which are very likely to be airing on
> Good Morning America and other ABC programs this week. We would like to offer you an opportunity
> to respond to the allegations she has raised about Mr.
> Epstein. Can you tell me who among you I should be in contact
> with? Should you wish to make a statement or respond in
> any other manner - I will need it by close-of-business
> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> 6060[redacted] (cell[redacted] (cell)[redacted]
> (ofc)[redacted]
>

From: [redacted] <[redacted]>
Sent: Tuesday, January 19, 2016 11:39 PM
To: Jeffrey Epstein
Subject: Help!

Importance: High

Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

--

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From: [redacted]
Sent: Wednesday, January 20, 2016 3:46 AM
To: jeffrey E.
Subject: Help!

Importance: High

Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.

On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

i appreciate it. I should be back feb 14,

On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:

Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

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HOUSE_OVERSIGHT_022772

From: [redacted]
Sent: Thursday, January 21, 2016 12:19 AM
To: jeffrey E.
Subject: Help!

Importance: High

Happy birthday, I remember the few I had spent with you, good memories!

The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
i appreciate your support is what i meant. has anyting happened recently? it is my birthday today

On Tue, Jan 19, 2016 at 10:46 PM, [redacted] wrote:
Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.

On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
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On Tue, Jan 19, 2016 at 6:39 PM, [redacted]
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I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

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HOUSE_OVERSIGHT_022773

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HOUSE_OVERSIGHT_022774

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From: [redacted]
Sent: Friday, January 22, 2016 2:28 PM
To: Jeffrey Epstein
Subject: Help!

Importance: High

Since I need and at this point want to move off this breathtaking property, I want to be able to buy a home in NJ, with $0 savings, = impossible. With salary and cost of living, I don't get ahead. Also my luck with men and relying on a man for support is the worst idea. Average homes in NJ are $400-$500K ugh I also still have to pay off student loan, ($9,809.74).

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
what do you suggest?

On Wed, Jan 20, 2016 at 7:19 PM, [redacted] wrote:
Happy birthday, I remember the few I had spent with you, good memories!

The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
i appreciate your support is what i meant. has anyting happened recently? it is my birthday today

On Tue, Jan 19, 2016 at 10:46 PM, [redacted] wrote:
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On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:
Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

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HOUSE_OVERSIGHT_022779

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Non-Responsive - Redacted

Date 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements		Number of Landings	Aircraft Category... Airplane	Glider	Helicopter
JAN 31	N96GM	C-421B	PBI	FYE			D.O. [redacted] PROTOCOL OPERATION REMOVE CARGO SETUP					
11	N908JC	B-727-31	PBI	JFK		93	JC, [redacted]		V1	1.6		
11	B-727-31	N908JC	JFK	LFPB		94	JC, GM, [redacted]		V1	2.5		
15	"	"	LFPB	LFPG		95	REPOSITION		/1	7.2		
15	"	"	LFPG	EGGW		96	JC, GM [redacted]			.5		
16	"	"	EGGW	LFMN		97	JC, GM [redacted]			.8		
19	"	"	LFMN	UNNT		98	JC, GM, [redacted]		V1	1.8		
20	"	"	UNNT	RJTB		99	JC, GM, [redacted]		V	6.7		
22	"	"	RJTB	VHHH		100	JC, GM (PRESIDENT BILL CLINTON) [redacted] MEDIC, [redacted]		/1	6.5		
23	"	"	VHHH	ZGSZ		101	SAME AS ABOVE	PETE ROTHWEB		4.0		
23	"	"	ZGSZ	WSSS		102	SAME AS ABOVE	PETE ROTHWEB		.4		
25	"	"	WSSS	VTBD		103	SAME AS ABOVE	PETE ROTHWEB		3.4		
25	"	"	VTBD	WBSB		104	SAME AS ABOVE	PETE ROTHWEB		2.2		
27	"	"	WBSB	WRRR		105	JC, GM [redacted]	PETE ROTHWEB		2.6		
29	"	"	WRRR	VCBI		106	JC, GM, [redacted]	PETE ROTHWEB	V1	2.1		
29	"	"	VCBI	OMDB		107	JC, GM [redacted]	PETE ROTHWEB		5.2		
30	"	"	OMDB	LFPB		108	JC, GM, [redacted]	PETE ROTHWEB		4.4		
31	"	"	LFPB	EGGW		109	JC, GM, [redacted]	PETE ROTHWEB		3.8		
JAN 7	"	"	EGGW	EIDW		110	REPOSITION	PETE ROTHWEB	1/1	1.0		
										1.7		
								Page Total	6/7	57.4		
								Amount Forward	6559 / 4.00	8635.1	3.3	112.6
								Total to Date	6581 / 4.59	8692.5	3.3	112.6

I certify that the statements made by me on this form are true.

Pilot's Signature [signature]

Date 2007	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE	GLIDER	HELICOPTER
FEB 16	B-727-31	N908SE	PBI	ABY		64	GM, [redacted], GLEN DUBBY, 2 GENERAL PASSENGER CARG	V	1 3		
16	"	"	ABY	JFK							
20	"	"	JFK	MRY		65	JG, GM, [redacted], GLEN DUBBY, 2 SCHOLLS [redacted] PASSENGER CARGO		2 1		
23	"	"	MRY	VNY		66	BRUCE DOUGLAS, [redacted] FROM ZAGAT, [redacted]	1/1	5 9		
23	"	"	MRY	VNY		69	DAVID BRACKMAN, [redacted] MICHAEL WOLF, DANIEL		DENNETT, RICHARD MILLER, JOSH		
23	"	"	VNY	JAX		67	JG, [redacted], [redacted] FROM ZAGAT,	1/1	8		
25	G-1159B	N802TC	FEZ	ABQ		68	GERTRUDE PASSENGER, BUDDY KING, GEORGE KING, LORD, [redacted] STEIN, [redacted] LANDING	1/	4 2		
25	"	"	TCB	ABQ		164	ROGER SQUIRE, [redacted] BARNETTE, ARLO (UNANIMAL)				
28	B-727-31	N908SE	JAX	PBI		192	GM	1/1	2 5		
MAR 2	B-727-200	SIMULATOR	MIA	MIA		71	BLOCK	1/1	4 3		
7	"	"		"			STOCK TICKS, STALLS, HOLDING,	1/1	1 2		
7	"	"		"			EMERGENCY DESCENT, RTO, UNUSUAL ATTITUDES, ENGINE FAILURES, MISSED APPROACH		2 0		
8	"	"		"			ENGINE FAILURE DESCENT, 2 GEN TWO OUT WENT TO HOLD, 4 ENGINE FAILURES, ENGINE FAILURE DESCENT, HOLDING, ENGINE CERT, VARIOUS WELL GRIDS		2 0		
10	B-727-31	N908SE	PBI	JFK		72	JG, GM, [redacted], 2 GENERAL	1/	2 0		
14	"	"	JFK	PBI		73	JG, [redacted], JOE PAGANO, [redacted] TODD		4 1		
17	"	"	PBI	JFK		74	JG, [redacted], JOE PAGANO, [redacted] TODD, 2 GENERAL		2 5		
19	"	"	JFK	EGGW		75	BILL CLINTON, DOUG BAND, 3 SECRET SERVICE	1/	2 6		
21	"	"	EGGW	JFK		76	JG, GM, [redacted]	1/1	6 7		
22	"	"	JFK	PBI		77	BILL CLINTON, DOUG BAND, 10 SECRET SERVICE, JG, GM, [redacted], NAOMI CAMPBELL, 1 MALE SERVICE CONTACT		7 8		
							Page Total	8 5 6	8 5 6		
							Amount Forward	6517 6169	8541 9	3 3 1	12 6
							Total to Date	6526 6175	8549 5	3 3 1	12 6

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

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Date 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE	GLIDER	HELI...
JUL 13	B-727-311F	N904JC	LEMN	GMTT		120	JC, GM [redacted], AP, [redacted]		2	1	
13	"	"	GMTT	GMMC		121	JC, GM [redacted], AP			7	
13	"	"	GMMC	LPAZ		122	JC, GM [redacted] AP [redacted] PRESIDENT CLINTON DOG, BANN, MERC, & SECRET SERVICE		2	4	
13	"	"	LPAZ	JFK		123	JC, GM [redacted] AP [redacted] PRESIDENT CLINTON DOG, BANN, MERC, & SECRET SERVICE		5	9	
18	"	"	JFK	PBI		124	JC, [redacted], 2 FEMALES		2	2	
19	"	"	PBI	JAX		125	[redacted] GREG HOLBURT, [redacted] -C CHIEF		1	0	
AUG 4	G-1159B	N904JC	PBI	MVY		1383	JC, 1 FEMALE		2	8	
4	"	"	MVY	BED		1384	JC, 1 FEMALE			7	
4	"	"	BED	TEB		1385	JC, 1 FEMALE			9	
5	"	"	TEB	SAF		1386	JC [redacted], 2 FEMALES		3	8	
6	C-172XP	N7394P	ACG	ACG			172 CHECK OUT	1/1		9	
6	206L3	N4474W	ZORRO	ACG				3/3		1	
15	B-727-311F	N908JC	JAX	JAX		126	C-CHECK FLIGHT TEST PETE RAMOS	1/1		9	
16	"	"	JAX	PBI		127	RETURN FROM C-CHECK PETE RAMOS			1	
17	G-1159-B	N904JC	SAF	TEB		1384	JC, GM [redacted], [redacted] JOHN NELSON CONFIRMED ALREADY [redacted] NICK SIMMONS,		3	7	
18	"	"	TEB	PBI		1340	JC, [redacted], 1 FEMALE		2	4	
21	B-727-311F	N908JC	PBI	TISX		128	JC, [redacted]		2	5	
25	"	"	TISX	JFK		129	JC, [redacted]	1/1	3	6	
28	"	"	JFK	LFPB		130	JC, [redacted], 1 FEMALE		6	4	
							Page Total	6/6	44	0	5
							Amount Forward	6547 0194	8 11	1 3 3	112 6
							Total to Date	6553 0294	8 54	1 3 3	117 1

I certify that the statements made by me on this form are true

Pilot's Signature David Pedigo

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Date ~~19~~ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... Airplane	Glider	Helicopter
Dec 31	B 727-31B	N908JE	LFPB	EGBB		131	JE, [redacted]	1/1	1 0		
Sep 2	"	"	EGBB	LFPB		132	JE, [redacted]		1 0		
3	"	"	LFPB	JFK		133	JE, [redacted]		1 0		
4	"	"	JFK	PBI		134	JE, 1 FEMALE, JOHN LEE BRUNER	1/1	7 5		
8	G-IISSB	N909TC	PBI	TCB		1593	JE, [redacted], 2 FEMALES		2 5		
9	G-IISSB	"	TCB	BCN		1593	JE, [redacted]		2 1		
9	"	"	BCN	TCB		1594	JE, [redacted]	1/1	4		
10	"	"	TCB	HST		1595	JE, [redacted]		9		
15	"	"	HST	PBI		1596	JE, [redacted], [redacted]		3 8		
21	B 727-31B	N909JE	JFK	LPAZ		136	PRESIDENT WELLSMITH, [redacted]	1/1	2 6		
22	"	"	LPAZ	DGAA		137	SEVEN PAGES CHRIS TUNKIS JEGM, [redacted]		5 2		
23	"	"	DGAA	DNAA		138	BOB ARNI, DAVID SLAVE, TRAVIS NASH		5 7		
24	"	"	DNAA	HRYR		139	CPR NEWS, RONNY WYNN, CHRIS FLATT, WASSMAN, RONDA KLEIN [redacted]	0/1	1 1		
25	"	"	HRYR	FQMA		140	SAME AS ABOVE LESS RONDA KLEIN		4 0		
26	"	"	FQMA	FACT		141	SAME AS ABOVE PLUS ERA MILLER + DUCK		3 5		
27	"	"	FACT	FAJS		142	SAME AS ABOVE	1/	2 4		
28	"	"	FAJS	FACT		143	[redacted] SAME AS ABOVE LESS JEGM [redacted], [redacted]		2 1		
29	"	"	FACT	DGAA		144	SAME AS ABOVE LESS [redacted], ERA MAGGIE ENDT		2 0		
29	"	"	DGAA	LFPB		145	SAME AS ABOVE PLUS JOE GM [redacted]		6 2		
							SAME AS ABOVE	/1	6 5		
							Page Total	5/6	62 5		
							Amount Forward	6553 6200	8784 1	3 3	1 3 1
							Total to Date	6558 6200	8846 6	3 3	1 3 1

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Pilot's Signature David Rodman

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Date 19 [illegible]	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival: From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE	GLIDER	HELICOPTER
29	B-727-31	N9[illegible]	LBPB	LGGW		146	[illegible]	1/1			
1	"	"	LGGW	LBPB		147	[illegible]		9		
2	"	"	LBPB	JFK		148	JE/GM, [redacted]		1	10	
3	"	"	JFK	PBI		149	JE/GM, [redacted]		8	11	
6	G-1159B	N[illegible]	PBI	TCB		1[illegible]	JE, SK, [redacted]		2	4	
11	"	"	TCB	PBI		1[illegible]	JE, GM, [redacted]		2	3	
14	"	"	PBI-OPS	PBI		1599	MARK POTTER - PPC		2	5	
15	"	"	PBI	TCB		1600	JE, GM, [redacted] RYAN DONNE [redacted]	1/1	2	4	
17	"	"	TCB	TIST		1601	JE, SK, [redacted]		3	7	
21	"	"	TIST	PBI		1602	JE, SK, [redacted]	1/1	2	6	
30	"	SEMINOLE	JFK	MEV			[illegible]				
30	"	"	MEV	JFK			[illegible]				
31	"	"	JFK	MEV			[illegible]				
Nov 1	"	"	MEV	JFK			[illegible]				
6	B-727-31	N9[illegible]	PBI	TCB		1603	JE, SK, [redacted]	3/3			
	"	SEMINOLE	JFK	MEV			[illegible]	1/1			
6	"	"	MEV	MEV			[illegible]				
10	G-1159B	N[illegible]	TIST	TCB		1[illegible]	[illegible]				
15	"	"	TCB	TIST		1[illegible]	[illegible]				
15	"	"	TIST	PBI		1[illegible]	[illegible]				

I certify that the statements made by me on this form are true

Pilot's Signature [illegible]

Page Total	9	5	4	4	5
Amount Forward	6558				
Total to Date	6567	5	5346	3	3 1 1 1

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Non-Responsive - Redacted

Non-Responsive - Redacted

From: [redacted]
Sent: Monday, February 15, 2016 3:25 PM
To: jeffrey E.
Subject: Help!

Importance: High

Still have Zorro ❤ pjs... Perfect for my lonely Valentine's Day. ☹

So, what do you think about my suggestion to help?

How are you holding up?

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
what do you suggest?

On Wed, Jan 20, 2016 at 7:19 PM, [redacted] wrote:
Happy birthday, I remember the few I had spent with you, good memories!

The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
i appreciate your support is what i meant. has anyting happened recently? it is my birthday today

On Tue, Jan 19, 2016 at 10:46 PM, [redacted] wrote:
Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.

On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
i appreciate it. I should be back feb 14,

On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:
Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of

you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

--

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HOUSE_OVERSIGHT_022804

From: Thomas Jr., Landon [[redacted]]
Sent: 11/7/2017 2:26:43 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?

On Tue, Nov 7, 2017 at 5:42 AM, jeffrey E. <jeevacation@gmail.com> wrote:

http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted] who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.

boies is going to be in the firiing line. from the biz view he represented Hank Greenburg AIG, , his fees were never paid as the appeals court overturned the win. but AIG as an insurance co. -- ... phone only

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon [[redacted]]
Sent: 11/7/2017 3:00:15 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Did your Saudi friends survive the purge?

On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:
As they are both bulkshitters

On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:
i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon [redacted]]
Sent: 11/8/2017 1:48:26 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Re Boies, Voila. https://www.nytimes.com/2017/11/07/business/weinstein-lawyer-david-boies.html. Unclear to me why he is getting involved with you....

On Tue, Nov 7, 2017 at 10:10 AM, jeffrey E. <jeevacation@gmail.com> wrote:
All. With gods help ;)

On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:
Did your Saudi friends survive the purge?

On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:
As they are both bulkshitters

On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:
i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?

On Tue, Nov 7, 2017 at 5:42 AM, jeffrey E. <jeevacation@gmail.com> wrote:
http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted]. who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.

boies is going to be in the firiing line. from the biz view he represented Hank Greenburg AIG, , his fees were never paid as the appeals court overturned the win. but AIG as an insurance co. -- ... phone only

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

--
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Landon Thomas, Jr.
Financial Reporter
New York Times
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http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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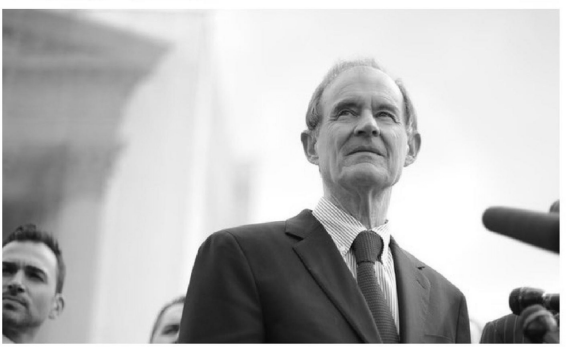
--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

Client Who Stood Up for Boies Goe Public in Sex Trafficking Case

After first outing herself to defend David Boies in a letter to The New York Times, Sarah Ransome is giv pseudonym "Jane Doe 43" in a sexual trafficking lawsuit against billionaire Jeffrey Epstein.

By **Miriam Rozen** | UPDATED Jan 09, 2018 at 12:21 PM | Originally published on **The American Lawyer**



David Boies, Boies Schiller Flexner
Diego M. Radzinschi/The National Law Journal

"Jane Doe 43" has formally identified herself as Sarah Ransome in a sexual trafficking lawsuit that her lawyers at Boies Schiller Flexner are pursuing against billionaire Jeffrey Epstein.

In a notice to change the case caption filed Friday in Manhattan federal court, Ransome's attorneys said she "no longer intends to proceed by way of pseudonym" in the case, which claims Epstein forced her to have sex for money.

Defense lawyers for Epstein had argued that Ransome must litigate under her own name after she wrote a Nov. 15 letter to The New York Times, which the Times published, in which she defended Boies Schiller and firm chairman David Boies against criticism stemming from Boies' work for Harvey Weinstein.

Ransome identified herself as Jane Doe 43 in the Times letter, which said Boies "heard me and came to my rescue" when others refused to take her allegations against Epstein seriously. "For the first time in 10

years I finally feel safe because of David Boies and his colleagues," wrote Ransome, who also said the firm did not charge her legal fees.

The letter was prompted by a Nov. 9 Times op-ed by Stanford University law professor Deborah Rhode, titled "David Boies's Egregious Involvement With Harvey Weinstein." Written in the wake of revelations in The New Yorker that Boies had engaged private investigators to kill an investigation by Times reporters into Weinstein's alleged sexual predations, the op-ed suggested that Boies' work for Weinstein was unethical, partly because the Times' was a Boies Schiller client.

Two days earlier, on Nov. 7, following publication of The New Yorker article, Boies had issued a statement addressed to his firm, stating that Weinstein was no longer a client and stressing that he "would never knowingly participate in an effort to intimidate or silence women or anyone else."

In a Nov. 21 brief in the Epstein litigation, defense lawyer Michael Miller of Steptoe & Johnson LLP argued that Ransome had never satisfied requirements to file anonymously and had publicly identified herself with her letter to the Times, so she should be required to add her name to the case caption.

Sigrid McCawley, a Boies Schiller partner in the firm's Fort Lauderdale office who represents Ransome along with Boies and others, said her client ultimately chose to go public with her name "in the hopes that her courage will inspire other Epstein victims to speak their truth."

In 2008, Epstein entered a guilty plea in Florida for soliciting an underage prostitute, which led to an 18-month jail term and placement on the national sex offender registry. Since then, multiple plaintiffs have filed related complaints against him, including one that includes allegations that President Donald Trump's winter White House, Mar-a-Lago, was the location of events that led to sex trafficking.

Epstein has argued that the court should dismiss the case because Ransome failed to state a substantiated claim and because the claims she makes are barred by the statute of limitations.

Steptoe's Miller had no immediate comment for this report.

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liriam Rozen

riam Rozen covers the business of law with a focus on law firm-client relationships. Contact her at rozen@alm.com. Twitter: @MiriamRozen.

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From: Brad Edwards[redacted]
Sent: 4/6/2018 3:49:11 PM
To: jeevacation@gmail.com
Attachments: image001.png; clinton_9-2002.pdf; shoppers_travel_not_redacted.pdf

Importance: High

CONFIDENTIAL SETTLEMENT DISCUSSIONS/NO PRIVILEGE WAIVER/PER YOUR REQUEST -

I expect a crisp, new bill. Your personalized message can say whatever you would like but it should include, "you win!"

EDWARDS POTTINGER LLC

Brad Edwards
Board Certified Trial Attorney
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
[redacted] | www.epllc.com

Date 48-2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... Airplane	Glider	Helicopter
AUG 31	B-727-31H	N908JE	LFPB	EGBB		131	JE, [redacted]	1/1	1 0		
SEP 2	"	"	EGBB	LFPB		132	JE, [redacted]		1 0		
3	"	"	LFPB	JFK		133	JE [redacted] JOHN LUC BRUNEL	1/1	7 5		
4	"	"	JFK	PBI		134	JE, 1 FEMALE		2 5		
8	G-1159B	N909JE	PBI	TEB		1592	JE, [redacted] 2 FEMALES		2 7		
9	G-1159B	"	TEB	BED		1593	JE, [redacted]	1/1	9		
9	"	"	BED	TEB		1594	JE, [redacted]		9		
10	"	"	TEB	TIST		1595	JE [redacted], [redacted] 1 MALE		3 8		
15	"	"	TIST	PBI		1596	JE, [redacted], [redacted]				
21	B-727-31H	N908JE	JFK	LPAZ		136	PRESIDENT WILLIAM J. CLINTON, [redacted] KEVIN SPACEY, CHRIS TUCKER, JE, CM, [redacted], CL	1/1	2 6		
22	"	"	LPAZ	DGAA		137	DONG BANN, DAVID SLANG, JIM KENNEY, ERIC NORRIS, RODNEY SLATER, CINDY LORD, WAGGONER, RON BURKLE, [redacted]	1/0	5 2		
23	"	"	DGAA	DNAA		138		1/1	5 7		
24	"	"	DNAA	HRYR		139	SAME AS ABOVE LESS RON BURKLE	0/1	1 7		
25	"	"	HRYR	FQMA		140	SAME AS ABOVE PLUS ERA MAGAZINER		4 0		
26	"	"	FQMA	FACT		141	SAME AS ABOVE		3 8		
27	"	"	FACT	FAJS		142	SAME AS ABOVE LESS, JE, CM, SLCL	1/	2 4		
28	"	"	FAJS	FACT		143	SAME AS ABOVE LESS [redacted], [redacted] ERA MAGAZINER		2 1		
29	"	"	FACT	DGAA		144	SAME AS ABOVE ADD, JE, CM, [redacted]		2 0		
29	"	"	DGAA	LFPB		145	SAME AS ABOVE		6 2		
								/1	6 5		
							Page Total	5/6	62 5		
							Amount Forward	6558 6200	8784 1	3 3	113
							Total to Date	6558 6266	8846 6	3 3	113

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

From: Martin Weinberg [redacted]]
Sent: 8/13/2018 7:30:44 PM
To: Jeff Epstein [jeevacation@gmail.com]; Martin Weinberg [redacted]
Subject: Fwd: Viceland

Importance: High

Fyi

Sent from my iPhone

Begin forwarded message:

From: Matt Williams [redacted]
Date: August 13, 2018 at 3:15:32 PM EDT
To: "Martin G. Weinberg" [redacted]
Subject: Re: Viceland

Thank you Marty,

The questions we wanted to reach out to Mr Epstein for comment are listed below. Feel free to contact me on [redacted] after reviewing. Kind regards - Matt

A former employee has told us that Donald Trump attended Mr Epstein's Palm Beach estate on at least two occasions. Does Mr Epstein recall hosting Donald Trump at that residence?

On one such occasion, it has been suggested to us that Mr Epstein and Donald Trump watched "young girls try on bikinis" while making comments on the their bodies." Does Mr Epstein have any comment?

How does Mr Epstein respond to claims that women - some under the legal age of sexual consent - were used as "sex slaves" at his properties?

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Did or does Mr Epstein have cameras inside rooms at his Palm Beach residence?

Did Mr Epstein remove those cameras before police raided the property as part of the investigation into alleged crimes? Did Mr Epstein ever hand over any recordings from any cameras at his properties to the authorities as part of his non-prosecution agreement?

Does Mr Epstein have in his possession any video recordings of Donald Trump taken from inside his Palm Beach estate or any other residence?

Did Mr Epstein hold sex parties at his residences involving girls under the age of sexual consent? Was Donald Trump ever present at any of these parties?

Has Mr Epstein upheld the conditions of his sentencing and registered as a sex offender in all jurisdictions in which he is due to do so?

Does Mr Epstein have any comment regarding allegations made by a woman named in the media as Virginia Giuffre/Roberts relating to her being sexually abused by Mr Epstein or used as a "sex slave"?

ENDS

On 13 August 2018 at 14:52, Martin G. Weinberg [redacted] wrote:

If you still want, send the questions. I would talk with you off the record after reviewing them (reserving the right at my option to make an on the record statement), hope that works for you. Marty

From: Matt Williams

Sent: Saturday, August 11, 2018 12:41 PM
To: Martin G. Weinberg
Subject: Re: Viceland

Hello Martin,

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Kind regards,
Matt

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Martin G Weinberg PC
20 Park Plaza
Suite 1000
Boston, MA 02116
Tel [redacted]
Cel [redacted]

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From: Kathy Ruemmler [redacted]
Sent: 8/14/2018 2:09:34 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Viceland

Importance: High

Privileged - Redacted

On Aug 14, 2018, at 10:07 AM, jeffrey E. <jeevacation@gmail.com> wrote:

Privileged - Redacted

On Tue, Aug 14, 2018 at 10:06 AM, Kathy Ruemmler <[redacted]> wrote:

Privileged - Redacted

On Aug 13, 2018, at 3:32 PM, jeffrey E. <jeevacation@gmail.com> wrote:

---------- Forwarded message ----------
From: **Martin Weinberg** <[redacted]>
Date: Mon, Aug 13, 2018 at 3:30 PM
Subject: Fwd: Viceland
To: Jeff Epstein <jeevacation@gmail.com>, Martin Weinberg <[redacted]>

Fyi

Sent from my iPhone

Begin forwarded message:

From: Matt Williams <[redacted]>
Date: August 13, 2018 at 3:15:32 PM EDT
To: "Martin G. Weinberg" <[redacted]>
Subject: Re: Viceland

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Martin G Weinberg PC
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Tel [redacted]
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From: Martin G. Weinberg[redacted]
Sent: 8/17/2018 2:48:49 PM
To: jeevacation@gmail.com;[redacted]
Subject: Fw: Viceland

Importance: High

FYI

From: Matt Williams
Sent: Friday, August 17, 2018 10:29 AM
To: Martin G. Weinberg
Cc: Tracie Morrissey
Subject: Re: Viceland

Hello Marty,

Just following up on the email I sent you earlier this week requesting comment from Mr Epstein, or a representative of his, in regards a number of questions we had. I'm also cc-ing my colleague Tracie, as going forward she will be a better point of contact should you or Mr Epstein wish to respond.

Kind regards,
Matt

On 13 August 2018 at 15:15, Matt Williams [redacted] wrote:

Thank you Marty,

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Martin G Weinberg PC
20 Park Plaza
Suite 1000
Boston, MA 02116
Tel [redacted]
Cel [redacted]

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 9, 2015 6:08 PM
To: Landon Thomas Jr.
Subject: off the record

Importance: High

Landon. [redacted]. the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.

--

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/9/2015 6:20:08 PM
To: Thomas Jr., Landon [redacted]
Subject: Re: off the record

Importance: High

number?

On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]> wrote:

Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?

But you cant just sit there taking punches like this -- especially wen the British tabs are driving this.

Maybe you go on British TV....

Call me any time.

On Fri, Jan 9, 2015 at 1:08 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Landon. [redacted] the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.

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--

Landon Thomas, Jr.
Financial Reporter
New York Times

[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 2:57:45 PM
To: Michael Wolff [redacted]
Subject: Re:

Importance: High

[redacted] talk then

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
Can you talk at noon? Probably need about 30 minutes. What is best number?

On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
anytime tomorw ok

On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 4:42:43 PM
To: Michael Wolff [redacted]]
Subject: Re:

Importance: High

now good?

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
Can you talk at noon? Probably need about 30 minutes. What is best number?

On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
anytime tomorw ok

On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 5:58:11 PM
To: Michael Wolff [redacted]
Subject: Re:

free now

On Sat, Jan 10, 2015 at 12:43 PM, Michael Wolff <[redacted]> wrote:
Need 15

On Saturday, January 10, 2015, jeffrey E. <jeevacation@gmail.com> wrote:
now good?

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 16, 2015 9:37 AM
To: Mortimer Zuckerman
Subject: thoughts?

Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced. Marie never contacted her. I though it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 6:23:52 PM
To: Michael Wolff [[redacted]]
Subject: Re: thoughts

today ok.

On Fri, Jan 16, 2015 at 10:54 AM, Michael Wolff <[redacted]> wrote:

I don't think I would put her out there. It probably seems too self-serving. But let's discuss. I have an idea about how to best use. Do you have time to continue our conversation post-3:00 today or tomorrow?

On Fri, Jan 16, 2015 at 4:36 AM, jeffrey E. <jeevacation@gmail.com> wrote:

Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 16, 2015 7:35 PM
To: Thomas Jr., Landon
Subject: Re: How are you holding up?

Importance: High

very well, my reputation has admittedly taken a hit . however, again, more calls re currency than i can handle. in addition I am considering a statement and positon that Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

On Fri, Jan 16, 2015 at 3:32 PM, Thomas Jr., Landon <[redacted]> wrote:

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 7:52:31 PM
To: Thomas Jr., Landon [redacted]]
Subject: Re: How are you holding up?

Importance: High

it is the begining world currencies are out of balance. brazil, etc

On Fri, Jan 16, 2015 at 3:45 PM, Thomas Jr., Landon <[redacted]> wrote:

I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted] And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.

Does franc drama worry you? Am writing on it now...

On Fri, Jan 16, 2015 at 2:35 PM, jeffrey E. <jeevacation@gmail.com> wrote:

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 8:12:46 PM
To: Thomas Jr., Landon [redacted]
Subject: Re: How are you holding up?

yes, but not if you own dollars. bitcoin collapse pound is the most overvalued of alll but its a tax haven. norwegina kroner weak. sfr ,dollar . only thing to own

On Fri, Jan 16, 2015 at 3:56 PM, Thomas Jr., Landon <[redacted]> wrote:
that is old news -- buy dollar and take a nap? Kind of like buying Apple?

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It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always some rarefied science or wealth, todays topic is how capital will most likely react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's finance ministers and foremost economists.

Epstein's apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class. He has quite turned himself into a hyperbolic representations of this wealth and hence, in a way, become accountable for it.

His own way to riches was to become a voracious student of the new money, as well as one of its larger than life characters, as it grew to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the corollary issues that arise when money, at a heretofore unimaginable scale , in personal hands alters many basic economic and social principles.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, over a hundred billion dollars.

"In the past, only governments had this amount of money," says Epstein conversationally, but making a pedagogical point, "money at a reality altering

scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger amounts than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without the always accompanied , unintended consequences, that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know little about the essence of money. They may know about generating it in their own businesses, but the great sums that result ,demand an entirely different sort of an intellectual discipline. The Forbes 400, says Epstein, not immune to still exhibiting an amount of wonder, increased their wealth by over $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire increased their wealth by more than a billion only in one year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be eventually change hands. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird ."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not solely as a philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high financial abstraction, but for a scandal of such luridness that he is, for a great many,is the new poster child of the lawlessness of privilege, and for a much smaller but elite circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most frothing-at-the-mouth antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is for real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.)

Without ever being asked to keep what I have heard there off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the masses) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to jail on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising one the worlds largest foundations on a new way to increase its already vast clout by adding funds from other wealthy individuals that can use the foundation resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is some of the hyper wealthy that at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet the public association with him, Epstein agreed to several on the record conversation with me, in the hope, and promise of a second chance, , that, after five years since his release from jail and relative peace, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Six years after the original suit, a Florida lawyer was now seeking to add

new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you so" said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were done in under 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: a gasp. Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life

somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but can you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Not long ago, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantages of the strategy, . Epstein's effort was to identify, dissect and choose a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful continued to beat a path to his door, it's

also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, Mort Zuckerman, and Peter Thiel [TK].

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of east, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein and is one of attorney general Eric Holder's closest friends. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there's a discussion of the Qartarian's visit—Epstein is serving chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "one of the most active investors in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh's chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "it is true that you are

going to have some low quality characters playing early in the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw after considering her options.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.

. Then Martin Nowak a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." Epstein preempts Nowak's explanation (which I'm not quite getting): "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail."

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who, in his Baron Fund, has $26 billion under management. Then Josh Harris the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

Perhaps it's just the ultimate feminist nightmare: Men (and a few more that a few women) continue to come to Epstein's because—no matter their public bows to modern manners—they simply don't care that he offends every aspect of reconstructed gender and political sensibilities. In private, it remains a man's world—a rich man's world.

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder of his genetic engineering initiatves that are inspired by the fact that elephants have 23 copies of tumor suppressor genes, never getting cancer in the first place. while humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, in which most of us live and largely accept, and are certainly influenced by. And then there are those people who live in the reality and therefore know that the media version is mostly bunk. If the media trumpets it, it is likely that some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, himself also run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

In this view, Epstein is a sort of Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is one of the largest landowners in New Mexico."

And then there is Epstein's yet more structural explanation as to why after jail and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is attached to an institutional . You are part of government, you want to be in government, or you are connected to a major bank or other portfolio, or you have fundamental relationships with distinct corporations or industries. Because of my more colorful past, I have none of that. I have no restrictive institutional ties which makes me in some sense one of the few wholly independent sources of information and truly independent brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. ((If I had invested $100,000 the way Epstein said I should in early

September, by the end of January I would have made $TK million. Alas, I did not invest.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein is just one version, albeit picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father works for the city's Parks Department, mother a housewife.

His sport, the captain of the math team at Lafayette High school. HE goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, and a sleight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving children ,divorce and money. "I found it as interesting as a physics experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch the experiment unfold."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts with astonishment ,a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart"- "don't you

understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility than has ever before existed. With an extreme facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than so many others who are also being quickly transformed.

He moves into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was he says, as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute financial abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s stock options started to be traded on an exchange. In essence, the first formally traded derivatives. The movement of these instruments are not directly tied 1to 1 to the stock price. The world of investing began turning from relationships to mathematics . In a sense I didn't really make money as much as I tried hard to create it." This was an intellectual activity of a fairly high order.

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was my reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in

1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest (plot lines from which Epstein might easily step).

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion (he befriends the show's star, Robin Leach), at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are purely a result of serendipity, I wouldn't decide where I was going until I got there."

At the same time, he is developing a unique perception, or, at least a market differentiation: the hyper wealthy had signifcantly different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money, was what they most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as fortunes eincreased exponentially .

"You can't spend a billion dollars, you can just reallocate it to a different investment classes. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely not to know very much about"

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or transparent paper trails. How can a person have enough money to merit increasing attention, but no clear way of having gotten it? Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He isin a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials

he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his version, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to navigate the potententials of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities .

In essence, as Epstein becomes more of a public figure the response to this description of his livelihood, is, in the media and in high social circles, "bullshit." True, however , there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be a big understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the

larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it, paying taxes on it, —an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. ("I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people.")

The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's sincere attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact,

the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible or supportable)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, often operatic about her journalistic exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, and without the remotest sense of observance or propriety—as though a kind of cultural autism—has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors, and strip clubs —that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the stepmother of one of the massage parlor girls, identified as "SG" in court documents, who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl who then supplies names of other girls. Some of whom are younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except

each is laid out in clinical, lurid, and near-identical detail. A cold Epstein demands that these allegedly unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him and then they return again. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleges anything more than Epstein masturbating.)

Epstein vastly raises the stakes by calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case, brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of young and gorgeous female retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the seemingly exploited and powerless.

Still, with a cold eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a solicitation charge in Florida, (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine—the law has recently been changed to TK).

In fact, the very "SG" clearly tells the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house (other girls will say they knew this is what they had to say, nevertheless not stopping them from saying it).

The local sex crimes prosecutor, Lana Belhalevic, interviews all the girls and determines that the offense is solely related to prostitution—that there are "no real

victims here"d.

Dershowitz, with chest pounding bravado, rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are without a doubt* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers what seems to be unprecedented arrangement in which Epstein's lawyers (not federal prosecutors, but Epstein's lawyers, in some ultimate act of self incrimination) have to go to the Palm Beach authorities and convince them to up the charges to an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to get them to agree to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, in a unique, if not unprecedented arrangement, he has to agree to pay the legal fees of any of the girls who want to sue him—and, agree not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high

6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

Jail hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (it is not so much a journal as a list of phone numbers, which were apparently collected or saved by Rod Rodriguez; all of this stolen material was somehow subsequently included in a court filing by Edwards). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

Indeed, Roberts, with the Daily Mail being her prime outlet, emerges as the most vocal accuser—and, in fact, the some total of the current story and attention.

That is, there is no story without her and what is being billed as her memoir of her "sex slavery" with Epstein, written ten years after the fact. Along with the Dershowitz and Prince Andrew charges, Roberts puts, with rather some narrative detail, both Clinton and Al and Tipper Gore on the island—and in fact Clinton, apparently with the acquiescence of the Secret Service, flying in a helicopter piloted by Epstein's girlfriend, an amateur pilot. Epstein's lawyers say that not only have Clinton and the Gores never been to the Epstein Island, but this fantasy is easily disproven by dsecret service records, which would seem to make the memoir opportunistic or hallucinatory fiction.

The FBI, in a recent filing, has argued that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach

a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives offered in exchange for a tale.

No new stories or even new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007. It's as though a kind of ground-hog day of moral opprobrium, a desire to repeat and to savor a new the old details.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms ever more incredulous and apoplectic that Epstein not only appears free but prospers too. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have not been sufficiently punished—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than hard work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus would be to get married, he said he'd rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, of course, a Gatsby-like tale: An enigmatic, and strangely appealing figure, able to invent and inhabit his own world is a mystery to try to decipher. Of course Gatsby in New York Post and Daily Mail parlance would likely be just a freaky financier too.

And this story is, in its way, about the limitation of journalism, in which the most compelling parts of the tale—Epstein's ambitions and impulses would be

well suited to a long running cable drama—need to be sacrificed not just to moral certainty but to a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house soon.

It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising or instructing a startling collection of the rich and powerful, who are slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). But with the paparazzi often posted near by, the outside world seems dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state who was visiting him.

His subject, on this morning in early November during a set of interviews he's agreed to have with me about his life and views, is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The baronial quality of the dining room is disturbed only by an ever-present white board, whereon he scribbles

calculations and notes, a tool he uses to conduct one of the world's most rarified economics class, attended often by the world's finance ministers and foremost economists.

His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social, and personal calculations. He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars and they are deciding how to use it to alter the world to their liking.

"In the past, only governments had this kind of money, money of a reality altering scale," says Epstein conversationally, but making a pedagogical point. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is

not as a philanthropist but as a sort of adviser or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably among the most influential people you've never heard of.

Though, likely, you have heard of him—not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child for the lawlessness of privilege. He is *that* Epstein, sent to jail in 2008 in Palm Beach on a prostitution charge, based on the complaints of over a dozen underage girls, with, ever since, periodic reminders of his notoriousness in the tabloid press.

And yet the mighty and powerful, disregarding his sex offender status, have still beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers. This includes, hardly least of all, Bill Gates, for whom Epstein has become a key advisor. [TKTK WHAT HE IS DOING FOR THE BILL AND MELINDA GATES FOUNDATION.]

Hence, as part of an effort to get "out in front" of the notice that might be expected to greet Gates' public association with him, Epstein—who I first met in 2002 as part of a group of TED partcipatants he was ferrying on his plan to west coast—agreed in early fall to these on the record conversations with me.

When we began to talk for this piece, Epstein was still hoping that, beyond his private confines, he might

finally, five years after his release from prison, be able to start rebuilding his public reputation.

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's longtime friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico. The Politico reporter had been following Epstein-related court filings and found a new one added to an old lawsuit with some rather jaw-dropping claims. The civil filing, based on claims of one of the plaintiffs, purported to connect a catch-all of bold-faced names associated with Epstein more than a decade ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring, and . claimed that Epstein's alleged sex slaves had been forced on Epstein's command to have sex with Dershowitz and the Prince.

Epstein, who sometimes seems to have an out-of-body attitude toward his own fate and bad press, said that while the claims were ludicrous—putting Dershowitz among sex slaves, he said, ought to point out just how ludicrous—he thought it might provoke "quite a show." In short order, Prince Andrew's alleged involvement sent the U.K. into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined in), which then effectively exported the story back to the U.S., where Epstein's now-long-defunct connection to Bill Clinton, suddenly became a shadow over Hillary, and hence big news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, ostrich like, not to look out. Little beyond his strict realm seems palatable or even all that familiar to him. Not long ago, when I met him for lunch in the West Village, he noted that he hadn't been out to lunch in a restaurant in 10 years.

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house, with press accounts recycling the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel universe of absolute entitlement—and offering brief glimpses of him stepping out of the house (the same photos endlessly republished), and suggesting depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, had just returned from an around-the-world honeymoon that Epstein had arranged for her. Some are, or have been, his romantic interests. His present girlfriend, whom he met four years ago at a

dinner party in New York, is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became a doctor—Epstein sent her to medical school—and married hedge funder Glen Dubin. Together they finance the Dubin Breast Center at Mount Sinai Hospital. Most of the women at one time will travel with Epstein to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the island in the Caribbean, the house in Palm Beach.

Epstein will sometimes move a meeting that starts in his dining room outside for a walk in the park—his idea of going out to lunch is a Sabrett's hot dog. The various girls in the house become the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood. They mingle freely with his powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive students (which, of course, might be regarded as having its own fetish-like attraction). Epstein explicitly denies that there is an sexual quid pro quo. ("There an expression that if you're fucking someone you work with they can come in late. It's not my

expression, it's Jimmy Goldsmith's.") Still, the constant attendance of so many comely young women—especially given his past conviction—seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or straight-faced way. And while it may be part of the appeal for the men who come to visit Epstein, it is as well a pecularity they put up with in order to spend time with him. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to whose turf, that when they went to see Epstein, they tend to comes to him.

He's created a world and you come to it.

A week in late September—U.N. week as it happened—began, over Sunday lunch, at Epstein's house with a colloquial for billionaires: Gates, Mort Zuckerman, the real estate billionaire and own of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor. [DISCUSSION?].

Epstein, preternaturally responsive to both the price of oil and to the politics of the Middle East, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad , indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: "Why are you financing the bad guys? What do you get out of that?" The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9 the next morning, Epstein was joined for breakfast in the dining room by Reid Weingarten, who's represented, among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein, and is one of attorney general Eric Holder's closest friends. Weingarten, hoarse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there's a discussion of the Qartarian's visit—Epstein is serving chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny (he posits that ISIS is part of their proxy war against the Kurds). There is, in Epstein's dining room, always an alternative version of world events—" "perception versus reality," says

Epstein, “not to imply that one necessarily has greater weight than the other.”

“Why?” I asked Weingarten, when Epstein briefly steps out of the room, “do so many people keep coming back here, everything considered.” This was before the most recent blowup but has been an obvious question ever since his stint in jail.

“Why we camp out here? I guess because there’s no place like it.”

Epstein summons in the next person cooling his heels in the ante-room. It’s a young man named Brock Pierce, a former child actor and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who now describes himself as the “the most active investor” in the Bitco and programmable currency space..

Epstein shortly checks to see if his next appointment is here to join us. Seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh’s chocolates, then focuses in on the Bitcoin investor.

“Okay,” he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings,, “I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don’t look that great now—but I could go from being seen as

a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, there's a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House (whose name I am asked not to use).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.
Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's explanation : "Think of cancer the same way as you

think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

In some sense, what goes on at Epstein's house confirms everyone's worst fears about power and the powerful: they are all in a secret and shared conversation. The world runs on insider information. Inside Epstein's dining room, it remains a man's world—a rich man's world—in which women exist as little more than room decorations or helpmates. Indeed his salons tend to offend most aspects of reconstructed gender and political sensibilities.

The rich perhaps come here, risking public opprobrium, not to mention the censure of their wives,

because there aren't, in this leveled age, too many places where they don't have to pretend that they are something other than rich and powerful. The conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world are actually hard to have.

That's the implicit Epstein view of the world, not, in most venues, comfortably expressable, not in positive and practical terms anyway: that the rich do have quite an autonomous control over events, and the wherewithal to effect the outcome of what they can't entirely control. Epstein faciliates that conversation without guilt or worry, and, in fact, with great enthusiasm. His lack of PC--the rich man's world he has created is flagrantly non PC--is a serious part of the draw.

Wealth is the bond and the experience. Once, at lunch in the Epstein dining room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did *you* meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: "At a certain level of finance, almost everyone is allied with

an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That's the usefulness of disgrace."

It's also true that Epstein's circle might be more forgiving of disgrace than the rest of the world. Many of these men have themselves been on the wrong side of a negative story or a scandal or a damaging public lawsuit. Any hyper-prominent person might run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi. And they know that the media's (or prosecutor's) version of events seldom square's with their own. In that way, they are, even with jail time, quite willing to give Epstein the benefit of the doubt. For some of his visitors, there's a clear order of identification: there but for the grace of God. For others tthere is even a wry sense of humor about it. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, (whose paper, the Daily News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby

elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

And, too, he seems often to be right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.4 million. (Alas, I did not invest.)

At any one moment, he is making a series of bets for himself and others--very much not as a workaday hedge fund, and much more as a privileged association. Money is always about the club it gets you into.

Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein's is just one version.

Epstein often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years and began taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

Dalton was his first exposure to the wealthy. They have, he concluded, just as many problems as the people in Coney Island, but different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him as a young man clearly on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) But he wasn't interested in being a journalist.

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If you're supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late '70s, arrived on Wall Street. By the fortuitous luck of being there at that point in time, Epstein was propelled by a much more explosive form of upward mobility than had ever before existed. With a facility for mathematics as well as for getting along with wealthy men, he got rich at an even faster rate than so many others.

He moved into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was, he says as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has, proudly, even militantly, never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to

embrace a level of acute abstraction. "In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a '50s mentality. But in the mid '70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he met Helen Gurley Brown and she made him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Stearns was a swift one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his

fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.

The Concorde phase of his life coincided with the Concorde phase of the 1980s. If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy

had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million. "If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect your children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

For a period, one part of his activities, he says, was recovering monies for countries looted by exiled dictators or military strongmen. Then, in his telling, he was representing a series of vastly wealthy people and families—not just doing their bidding or their investing, but helping them to navigate the ambitions of their wealth. If they had big dreams before, it's nothing to what they can have now.

If early in his career he might have seemed like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

At just about this point in the narrative, the incredulity about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without position, public holdings, or obvious paper trails. His is a questionable substrata of wealth, without institutional credentials or bona fides. He's a freelancer. That's the rub: he doesn't work for anyone.

There is no clear alternate narrative. No one is accusing him of anything, except sometimes guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persists: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic

relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is private and secretive, but grandly so. He joined the board of Rockefeller University. He was suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He bought an airplane. Then another. He expanded his holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island.

He befriended Bill Clinton in his new after-office life--and that. And would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—was suddenly being ferried around in the jet of…*who* exactly? The New York Post was the

first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. "I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people."

I met Epstein around this time, on the flight out to TED. (Epstein had become an active backer of advanced scientific research and a TED fixture.) A small group assembled at the private plane terminal at JFK, most of us unfamiliar with our benefactor, and as we headed in the direction of the discreet private plans we were gently pointed to our ride: Epstein's 727.

It was like something out of a men's magazine fantasy of the luxe life. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein was accompanied by three young women who were witty, poised, helpful, as well as powerfully alluring. And Epstein, tanned, relaxed, with a wide open smile, was an attentive host, soliciting every guest's story and views. (One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then they described for Epstein, in what I cannot now remember was a put-on or entrepreneurial brainstorm, a brand extension in which they would

market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such wealth and influence. Epstein, sensing that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the real troubles began. Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're

called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others." He says all this in a straightforward manner that seems utterly tone-deaf to its effect, as if he suffers from a sort of cultural autism.

After Epstein's round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein's house, identified as "SG" in court documents, called the police. The police interviewed the girl [WHO WAS HOW OLD AT THE TIME?] who supplied the names of other girls, some of whom were younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18 [THIS IS IMPORTANT: HOW OLD WAS THE YOUNGEST?]; the others were in their 20s and 30s; one woman was in her 60s—a number of whom gave statements describing scenarios not terribly different from Epstein's description above, except in this version of events a cold and forceful Epstein demanded that unwitting juveniles perform repulsive acts on him. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than Epstein masturbating.)

A shadowy rich man, friend of the louche and disgraced president, at all times surrounded by a retinue of young and gorgeous women doing his bidding, is

found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girlfriend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and is henceforth known as the procurer or madam for Epstein and, later, his friends). It certainly doesn't look good.

Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach. Epstein might have just been hit with solicitation charges and paid a fine even though some of the girls were underage; prostitution charges in Florida (as in most places) have no age limits and the Palm Beach grand jury proposed solely a solicitation charge. But Epstein's flamboyance and his friendship with Clinton invited the scrutiny of the Bush FBI, and ultimately Epstein and his legal team decided to go for a plea deal. The result was a baroque set of agreements with both the Feds and Palm Beach county, which mandated jail time (Epstein was sentenced to 18 months, of which he served 13—nearly all Florida prisoners serve only 70% of their officially sentenced time) and sex offender status. The deal also provided for an unusual, if not

unprecedented, arrangement by which he agreed to pay the legal fees for 40 girls specified by the FBI in civil suits against him and not to oppose their claims, resulting in an overall settlement costs that may be as high as $20 million.

It is in part this impossible-to-explain weird-justice outcome that has made some people think he was covering for someone else--one person in particular.

"So?" I ask directly, one day late in our interviews. "Explain this. It does make it look like you were covering for you-know-who."

"Covering?" He chuckles. "First, by the way, you-know-who was never there. Never came to the island. Not once. Not ever. But you're right, the settlement was preposterous. Nobody has ever heard anything like it. But while it was breathtaking and perverse and, well, Kafka-esque, it was also straightforward: you sign this or else we will federally indict you in ways that will threaten your property, the people who work for you, and put you in jail for ten years. I took the deal."

A bit more baroqueness: one of the lawyers representing some of the plaintiffs, Scott Rothstein, would also go to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached and that many of the listed women had agreed to take reduced immediate cash payments.

Epstein got out of jail in 2009. The experience does not seem to have much dented his general bonhomie. One evening over dinner he and the former director of

ports in the semi-rouge state of Djibouti, who had fallen afoul of the regime and found himself in prison, exchanged jail stories--they agreed, not as bad you'd think. Epstein, having done his time, moved almost seamlessly back into his life, to the shock-shock of tabloids whenever they seemed to be reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprising few others dropped him, the Clinton's did, an irony of the present tabloid interest in his old address book with its many Clinton contacts. And his sex offender status transformed him from libertine and playboy to paedophile, a distinction in the current climate it is almost impossible to argue.

While he has reguarly entertained PR proposals aimed at his public rehabilitation, until Gates prodded him, and then until this recent renwed tabloid fever, he had concluded that he was perfectlysatisfied living behind high walls and in his own exclusive club.

Even now, this new Dershowitz-Prince Andrew chapter seems like a parralel distubance rather than something that is actually effecting his world. "Bad press is not something actually bad," he notes, trying to balance perception and reality.

And, indeed, the tabloid narrative and his own narrative rather define wholly separate universes.

The, the ongoing case, with the filings that introduced the Dershowitz and Prince Andrew

allegations, he notes, was brought by the imprisoned Rothstein's former partner, Brad Edwards, part and parcel of the settlment industry that has grown up around him.

This new chapter relies entirely on the testimony and the memoir—excerpts of which were published by the Daily Mail—of Virginia Roberts, who claims that Ghislaine Maxwell met her, when she was 17, at Donald Trump's Palm Beach resort and got her a job in the Epstein house, which she held for several years, traveling in the Epstein entourage. It is Roberts—who refused to cooperate with the FBI's 2007 investigation of Epstein—who has propounded the "sex slave" narrative. She claims that "massage" was a code word for sexual acts, and that she worked for Epstein for TK years for $TK, having sex with him and his friends, and reporting on the details to Epstein so he would have blackmailable details about them. In the laundry list of big names, she also claims to have met (though not had sex with) Bill Clinton and Al and Tipper Gore through Epstein.

This is all, says Epstein, utterly false, including that she met Clinton and the Gores, who Epstein says he has never met. Indeed, there has been no corroboration of the Roberts charges nor any new evidence or further prosecution and Dershowitz is suing her for libel. Roberts who was part of the original settlement is now seeking an additional suing Epstein for an additional $50 million from Epstein, and planning a book on her

life and the scandal.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice to follow, Epstein would not have done anything differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of morality, custom, politics, feminists, the media, that's just a bit of bad luck.

And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy (excuse me, peadophile) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to take him as he comes. Epstein is their confidant. Not the only nexus of them, but one of them. Dr. Epstein. Lay on my couch. As he is everybody's confident, everybody becomes his

confident. This is a back and forth, a power loop. His expertise is knowing what other people know. Which surely offers a unique sense of confidence that it is possible to understand how the world works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich. The fact that he's an outsider, even a pariah, nobody you have to fear, in his own way a secret (and all powerful people like secrets) is—if you're not caught in his company—reassuring too.

In the last days of my interviews with Epstein, he was called by a particular world-stage individual, indeed among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. And so the math teacher got on his plane.

It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising or instructing a startling collection of the rich and powerful, who are slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). But with the paparazzi often posted near by, the outside world is dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state who was visiting him.

His subject, on this morning in early November during a set of interviews he's agreed to have with me about his life and views, is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The faux-baronial quality of the dining room is disturbed by an ever-present white board, where he scribbles

calculations and notes, conducting the world's most rarified economics class, often attended by many of the world's finance ministers and foremost economists.

His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social, and personal calculations. He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy—the six men at this dinner, all technology entrepreneurs, representing, together, several hundred billion dollars and now trying to figure out how to use it to shape the world to their liking.

"In the past, only governments had this kind of money, money of a reality altering scale," says Epstein in a chipper and smoothed-out Brooklynese. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is

not as a philanthropist but as a sort of adviser or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably among the most influential people you've never heard of.

Though, likely, you have heard of him—not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child for the lawlessness of privilege. He is *that* Epstein, sent to jail in 2008 in Palm Beach on a prostitution charge, based on the complaints of over a dozen underage girls making him, according to the Daily Mail—among his most fervent antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, disregarding his notoriety, still beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers. This includes, hardly least of all, Bill Gates, for whom Epstein has become a key advisor. Epstein has proposed leveraging the resources of the Bill and Melinda Gates Foundation to accommodate many other fortunes, so that, Epstein explains, "you might join 50 or 60 billionaires on one giving project."

Hence, as part of a Gates-encouraged effort to get "out in front" of the notice that might be expected to greet Gates' public association with him, Epstein—whom I first met in 2002 as part of a group of TED participants he was ferrying on his plane to the west coast—agreed in early fall to these on-the-record

conversations with me. He hoped that, six years after his release from prison, he could begin to rebuild his public reputation.

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's longtime friends and occasional legal advisors—they have a bickering brotherly relationship— had received from a reporter at Politico. The Politico reporter had been following Epstein-related court filings and found a new one added to an old lawsuit with some rather jaw-dropping claims. The civil filing, based on claims of one of the plaintiffs, purported to connect a catch-all of bold-faced names associated with Epstein more than a decade ago, including Dershowitz and Britain's Prince Andrew, to a "sex slave" ring. Indeed, she claimed that she had been forced to have sex with Dershowitz and the Prince at Epstein's command.

Epstein, who sometimes seems to have an out-of-body attitude toward his own fate and bad press, said that while the claims were ludicrous—putting Dershowitz in a sex slave ring, he said, ought to point out just how ludicrous—he thought it might provoke "quite a show." In short order, Prince Andrew's alleged involvement sent the U.K. into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined in), which then effectively exported the story back to the U.S., where Epstein's

now-long-defunct connection to Bill Clinton, suddenly became a shadow over Hillary, and hence big news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, ostrich like, not to look out. Little beyond his strict realm seems palatable or even all that familiar to him. Not long ago, when I met him for lunch in the West Village, he noted that he hadn't been out to lunch in a restaurant in ten years. It was a not particularly pleasant experience for him and we were done in 30 minutes.

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house. Press accounts recycle the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel universe of absolute entitlement—with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women—in their twenties and thirties—who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, had just returned from an

around-the-world honeymoon that Epstein had arranged for her. Some are, or have been, his romantic interests. His present girlfriend, whom he met four years ago at a dinner party in New York, is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became a doctor—Epstein sent her to medical school—and married hedge funder Glen Dubin. Together they finance the Dubin Breast Center at Mount Sinai Hospital. Most of the women at one time will travel with Epstein to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the island in the Caribbean, the house in Palm Beach.

Epstein will sometimes move a meeting in his dining room outside to the park—his idea of going out to lunch is a Sabrett's hot dog—with the various girls in the house the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood. They mingle freely with his powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive students (which, of course, might be regarded as having its own fetish-like attraction). Epstein explicitly denies that there is an sexual quid pro quo.

(TK Jimmy Goldsmith quote.) Still, the constant attendance of so many comely young (but of age) women—especially given his past conviction—seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or straight-faced way. And while it may be part of the appeal for the men who come to visit Epstein, it is as well a peculiarity they put up with in order to spend time with him. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the fact that, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to whose turf, that, when they want to see Epstein, they tend to come to him. He's created a world and you enter it.

A week in late September—U.N. week as it happened—begins, over Sunday lunch, with a colloquial for billionaires: Gates, Mort Zuckerman, the real estate billionaire and owner of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor. The subject is Epstein's concept for the Gates Foundation of what he calls a "donor advised fund" that could lend the Gates expertise to other billionaires and

his view that only the Gates Foundation has real experience in the vast complexities of giving away "hyper wealth."

That evening, Epstein, preternaturally responsive to both the price of oil and to the politics of the Middle East, entertains a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, keeps prodding: "Why are you financing the bad guys? What do you get out of that?" The Qatarians, in some mild diplomatic discomfort, seem most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9 the next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented, among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sachs's Lloyd Blankfein, and is one of attorney general Eric Holder's closest friends. Weingarten, hoarse with a cold, is just back from a failed defense of former Connecticut Governor John Rowland. After a blow-by-blow of the trial, there was a discussion of the Qatarian's visit—Epstein served chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny (he posits that ISIS is part of their proxy war against the Kurds). There

is, in Epstein's dining room, always an alternative version of world events—"perception versus reality," says Epstein, "not to imply that one necessarily has greater weight than the other."

"Why," I ask Weingarten, when Epstein briefly steps out of the room, "do so many people keep coming back here, everything considered." This is before the most recent blowup but has been an obvious question ever since his stint in jail.

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout with its own sex scandal—who now describes himself as the "the most active investor" in Bitcoin and the programmable currency space.

After a bit, Epstein invites his next appointment to join them. Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh Hamad chocolates, then focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings, "I have opportunities here. But an additional feature of my decision problem, roughly speaking, is that the worst that could happen to you is that you could lose all the

money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in seeming dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, in the Epstein dining room (he seems rarely to use the rest of the house's 50,000 square feet), there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House, whose name I am asked not to use. There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov. Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part

of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's explanation : "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")

Then Richard Axel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

What goes on at Epstein's house confirms everyone's worst fears about power and the powerful: they are all in a secret and shared conversation. The world runs on insider information. And, certainly, inside Epstein's dining room, it remains a man's world—a rich man's world. Indeed his salons tend to offend most every aspect of reconstructed gender and political sensibilities.

The rich come here, risking public opprobrium, not to mention the censure of their wives, because there aren't, in this leveled age, too many places where they don't have to pretend that they are something other than rich and powerful. The conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world are actually hard to have. At Jeffrey's the rich don't have to humor the sensitivities of the rest of the world. This is unfiltered power and wealth, which seems not so much crass as efficient: this is the way the world works, no bullshit. Epstein facilitates that conversation without guilt or worry, and, in fact, with great glee and enthusiasm. It is not just the remarkable flow of valuable information before it hits the New York Times (including, while I sat here, notice of the resignation of a cabinet secretary a week before it hit the Times), but Epstein's almost small-town narrative of the doings of the powerful in the face of this week's economic trends, a kind of back-fence gossip that just happens to feature the comings, goings, and secrets of some of the world's most astute players and assorted megalomaniacs.

Wealth is the bond and the experience. Once, at lunch in the Epstein dining room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did *you* meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he

said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: "At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That's the usefulness of disgrace."

It's also true that Epstein's circle might be more forgiving of disgrace than the rest of the world. Many of these men have themselves been on the wrong side of a negative story or a scandal or a damaging public lawsuit. Any hyper-prominent person might run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi. And they know that the media's (or prosecutors') version of events seldom square's with their own. In that way, they are, even after a conviction, quite willing to give Epstein the benefit of the doubt.

There is even a wry sense of humor about his propensity for a certain kind of scandal. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, (whose paper, the Daily

News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

And, too, he seems often to be right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.4 million. (Alas, I did not invest.) At any one moment, he is making a series of bets for himself and others. Recently he identified a dozen or so promising quants, each hawking their own special-sauce algorithm, and planned to test their math with investments of up to $5 million each. But don't mistake him for running anything like a workaday hedge fund; this is much more a privileged association. Money is always about the club it gets you into.

Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started

in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein's is just one version, albeit picaresque and louche, of this shared story.

Epstein often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years and began taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

Dalton was his first exposure to the wealthy. They have, he concluded, just as many problems as the people in Coney Island, but different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him as a young man clearly on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) But he wasn't interested in being a journalist.

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If you're supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late '70s, arrived on Wall Street. By the fortuitous luck of being there at that point in time, Epstein was propelled by a much more explosive form of upward mobility than had ever before existed. With a facility for mathematics as well as for getting along with wealthy men, he got rich at an even faster rate than so many others.

He moved into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of

the Maxwell Plum era when the 60s on Second was the glamour address—a building that was, he says as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has, proudly, even militantly, never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction. "In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a '50s mentality. But in the mid '70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he met Helen Gurley Brown and she made him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was

attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Stearns was a swift one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.

The Concorde phase of his life coincided with the Concorde phase of the 1980s. If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million. "If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect your children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

For a period, one part of his activities, he says, was recovering monies for countries looted by exiled

dictators or military strongmen. Then, in his telling, he was representing a series of vastly wealthy people and families—not just doing their bidding or their investing, but helping them to navigate the ambitions of their wealth. If they had big dreams before, it's nothing to what they can have now.

If early in his career he might have seemed like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator. At just about this point in the narrative, the incredulity about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without position, public holdings, or obvious paper trails. His is a questionable substrata of wealth, without institutional credentials or bona fides. He's a freelancer. That's the rub: he doesn't work for anyone.

There is no clear alternate narrative, except perhaps guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persists: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmailed. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is private and secretive, but grandly so. He joined the board of Rockefeller University. He was suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He bought an airplane. Then another. He expanded his

holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island.

He befriended Bill Clinton in his new after-office life—and that would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—was suddenly being ferried around in the jet of...*who* exactly? The New York Post was the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. "I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people."

I met Epstein around this time, on the flight out to TED. (Epstein had become an active backer of advanced scientific research and a fixture at the conference.) A small group assembled at the private plane terminal at JFK, most of us unfamiliar with our benefactor, and as we headed in the direction of the discreet private plans we were gently pointed to our ride: Epstein's 727.

It was like something out of a men's magazine fantasy of the luxe life. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein was accompanied by three young women who were witty, poised, helpful, as well as powerfully alluring. And Epstein, tanned, relaxed, with a wide open

smile, was an attentive host, soliciting every guest's story and views. (One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then they described for Epstein, in what I cannot now remember was a put-on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. (Epstein's flirtation with the media would result in his backing an unsuccessful effort, of which I was a part, to buy New York Magazine in 2004, and then later, with Mort Zuckerman, backing the launch of Radar magazine.)

New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such wealth and influence. Epstein, sensing

that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

"Then you should have lived in a two bedroom apartment in Queens," responded Carter.

And then the real troubles began. Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others." He says all this in a straightforward manner that seems utterly tone-deaf to its effect, as if he suffers from a sort of cultural autism.

After Epstein's round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein's house called the police. The police interviewed the girl—who was TK at the time, but whose website identified her as 18—and the girl supplied the names of other girls, some of whom were also younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18 [THIS IS IMPORTANT: HOW OLD WAS THE YOUNGEST?]; the others were in their 20s and 30s; one woman was in her 60s—a number of whom gave statements describing, in essence, happy - ending massages. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than this.)

A shadowy rich man, friend of the louche and disgraced president, at all times surrounded by a retinue of young and attractive women doing his bidding, is found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girlfriend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and is henceforth known as the procurer or madam for Epstein and, later, his friends). It certainly doesn't look good.

Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach. Epstein might have just been hit with solicitation charges and paid a fine even though some of the girls

were underage; prostitution charges in Florida (as in most places) have no age limits and the Palm Beach grand jury proposed solely a solicitation charge. But Epstein's flamboyance and his friendship with Clinton invited the scrutiny of the Bush FBI, and ultimately Epstein and his legal team decided to go for a plea deal. The result was a baroque set of agreements with both the Feds and Palm Beach county, which mandated jail time (Epstein was sentenced to 18 months, of which he served 13—nearly all Florida prisoners serve only 70% of their officially sentenced time) and sex offender status. The deal also provided for an unusual, if not unprecedented, arrangement by which he agreed to pay the legal fees for 40 girls specified by the FBI in civil suits against him and not to oppose their claims, resulting in an overall settlement costs that may be as high as $20 million. (A bit more baroqueness: one of the lawyers representing some of the plaintiffs, Scott Rothstein, would also go to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached and that many of the listed women had agreed to take reduced immediate cash payments.)

It is in part this impossible-to-explain weird-justice outcome that has made some people think Epstein was covering for someone, or something, else—perhaps his most high-profile friend?

"So?" I ask, one day late in our interviews. "Explain this. It does make it look like you were covering for you-know-who."

"Covering?" He chuckles. "First, by the way, you-know-who was never there. Never came to the island. Not once. Not ever. But you're right—nobody has ever heard of anything like [this agreement]. But while it was breathtaking, it was also straightforward: you sign this or else we will federally indict you in ways that will threaten your property, the people who work for you, and might put you in jail for ten years. I took the deal." (Indeed, the deal protected him from federal prosecution, and protected his "co-conspirators," the employees who supplied him with massage girls, from being charged as accessories to molestation and sex with minors.)

Epstein got out of jail in 2009. The experience does not seem to have much dented his general bonhomie. One evening over dinner he and the former director of ports in the semi-rouge state of Djibouti, who had fallen afoul of the regime and found himself in prison, exchanged jail stories—they agreed, not as bad you'd think. Epstein, having done his time, moved mostly seamlessly back into his life, to the shock-shock of tabloids whenever they are reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprisingly few others dropped him, the Clinton's did, an irony of the

present tabloid interest in Epstein's old address book with its many Clinton contacts. And his sex offender status has transformed him from libertine playboy to pedophile.

While he has regularly entertained PR proposals aimed at his public rehabilitation, until Gates prodded him, and until this recent renewed tabloid fever, Epstein had concluded that he was perfectly satisfied living behind high walls and in his own exclusive club. Even now, this new Dershowitz-Prince Andrew chapter seems like a parallel disturbance rather than something that is actually affecting him. "Bad press is not something actually bad," he notes, trying to balance perception and reality.

And, indeed, the tabloid narrative and his own story rather define divergent realities. The ongoing case, with the filings that introduced the Dershowitz and Prince Andrew allegations, was brought by the imprisoned Rothstein's former partner, Brad Edwards. It relies entirely on the testimony and the memoir, excerpts of which were published by the Daily Mail, of Virginia Roberts, who claims that Ghislaine Maxwell met her, when she was 17, at Donald Trump's Palm Beach resort and got her a job in the Epstein house, which she held for several years, traveling in the Epstein entourage. It is Roberts—who refused to cooperate with the FBI's 2007 investigation of Epstein—who has propounded the "sex slave" narrative. She claims that "massage" was a code word for sexual acts, and that she worked for Epstein for

TK years for $TK, having sex with him and his friends, and reporting on the details to Epstein so he would have blackmailable details about them. In the laundry list of big names, she also claims that Epstein introduced her to Bill Clinton and Al and Tipper Gore (though there was no sex involved).

Roberts, who was part of the original settlement—which some accounts put as high as $1 million—has sought an additional $50 million {NEEDS STATUS CHECK} from Epstein [CLARIFY THAT SHE IS NOT SUING HIM BUT SUING THE GOVT AND SAYING SHE'LL DROP IT IF HE PAYS HER?], and is planning a book on her life and the scandal. But there has been no corroboration of the Roberts charges nor any new evidence or further prosecution. Epstein says she never met Clinton through him and, indeed, that he himself has never met the Gores. Dershowitz is suing her for libel.

But true or not, the story has taken on a life of its own, with the US and British tabloid press continuing, so far unsuccessfully, to search for a smoking gun connecting Clinton to underage girls, which could have the effect of derailing the Hillary Clinton presidential campaign. In the meantime, it is delaying—quite an understatement—Epstein's hoped-for public rehabilitation.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice

to follow, Epstein would have done little differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of morality, custom, politics, feminists, the media, that's just a bit of bad luck.

And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent playboy (excuse me, pedophile) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to take him as he comes. Epstein is their confidant. Not the only nexus of them, but one of them. Dr. Epstein. Lay on my couch. As he is everybody's confidant, everybody becomes his confidant. This is the back and forth, the power loop. His expertise is knowing what other people know. Which surely offers a unique sense of confidence that it

is possible to understand how the world works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich.

In the last days of my interviews with Epstein, he was called by a particular world-stage individual, among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. Epstein welcomed him to the club.

From: jeffrey E. [jeevacation@gmail.com]
Sent: 4/22/2015 7:16:34 PM
To: Darren Indyke[redacted]
Subject: Fwd: ATTORNEY-CLIENT PRIVILEGE

Importance: High

---------- Forwarded message ----------
From: **Martin Weinberg** [redacted]
Date: Wed, Apr 22, 2015 at 3:03 PM
Subject: ATTORNEY-CLIENT PRIVILEGE
To: Jeffrey Epstein <jeevacation@gmail.com>, Kathy Ruemmler[redacted]
Cc: Martin Weinberg [redacted]

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted]

[redacted] cell

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This Electronic Message contains

information from the Law Office of

Martin G. Weinberg, P.C.,

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--- On Wed, 4/22/15, Hill, James E. [redacted] wrote:

> From: Hill, James E. [redacted]
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: [redacted]
> Date: Wednesday, April 22, 2015, 1:57 PM
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> div.yiv0232406113MsoPlainText
> {margin:0in;margin-bottom:.0001pt;font-size:11.0pt;}
> #yiv0232406113 span.yiv0232406113PlainTextChar
> {}
> #yiv0232406113 .yiv0232406113MsoChpDefault
> {}
> _filtered #yiv0232406113 {margin:1.0in 1.0in 1.0in 1.0in;}
> #yiv0232406113 div.yiv0232406113WordSection1
> {}
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> _filtered #yiv0232406113 {}
> _filtered #yiv0232406113 {font-family:Symbol;}
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> _filtered #yiv0232406113 {font-family:Wingdings;}
> _filtered #yiv0232406113 {font-family:Symbol;}
> _filtered #yiv0232406113 {}
> _filtered #yiv0232406113 {font-family:Wingdings;}
> _filtered #yiv0232406113 {font-family:Symbol;}
> _filtered #yiv0232406113 {}
> _filtered #yiv0232406113 {font-family:Wingdings;}
> #yiv0232406113 ol

> {margin-bottom:0in;}
> #yiv0232406113 ul
> {margin-bottom:0in;}
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> was paid $200 and driven home by a butler.·
> She says she quit her job and went to
> work for Epstein within a couple of weeks of the first
> encounter·
> She says Epstein always knew how old
> she was and says specifically that she, Epstein and Maxwell
> celebrated [redacted]'s 16th b-day together·
> She says Epstein paid her for the
> encounters and for her apartment and car·
> She says she would be expected to have
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> She says these people included
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> a pedophile, a dangerous man who should not be walking
> free -----Original
> Message-----
> From: Martin Weinberg
> [mailto[redacted]
> Sent: Wednesday,
> April 22, 2015 1:44 PM
> To: Hill, James E.
> Cc: Martin Weinberg
> Subject:
> Re: inquiry from ABC News re Jeffrey Epstein James, just confirming
> that you are sending me the bulletpoints from the interview
> you are asking about, thanksMartyMartin G. Weinberg,
> Esq. 20 Park Plaza, Suite
> 1000 Boston, MA 02116 [redacted]
cell ========== This Electronic Message
> contains information from the Law
> Office of Martin G. Weinberg, P.C.,
> and may be privileged. The
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> disclosure, copying, distribution, or use of
> the contents of this message
> is prohibited. ----------On Tue, 4/21/15, Hill,
> James E. [redacted]
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: [redacted]
> [redacted] > Date: Tuesday, April 21,
> 2015, 4:36 PM
> Greetings.
> This is James Hill
> of ABC News. I write to you regarding Jeffrey Epstein – and
> your representation of him in the CVRA case in which he
> is an intervener. ABC News has recently conducted an on-camera
> interview with Virginia Roberts (formerly known as Jane
> Doe #3), portions of which are very likely to be airing on
> Good Morning America and other ABC programs this week. We would like to offer you an opportunity
> to respond to the allegations she has raised about Mr.
> Epstein. Can you tell me who among you I should be in contact
> with? Should you wish to make a statement or respond in
> any other manner - I will need it by close-of-business
> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> [redacted] (cell[redacted]cell[redacted]
> (ofc)[redacted]
>

--

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Date: Wednesday, April 22 2015 07:34 PM
Subject: Fwd: ATTORNEY- CLIENT PRIVILEGE
From: jeffrey E. <jeevacation@gmail.com>
To: Alan Dershowitz <[redacted]>;

Privileged - Redacted

--------- Forwarded message ---------
From: **Martin Weinberg** <[redacted]>
Date: Wed, Apr 22, 2015 at 3:03 PM
Subject: ATTORNEY- CLIENT PRIVILEGE
To: Jeffrey Epstein <jeevacation@gmail.com>, Kathy Ruemmler <[redacted]>
Cc: Martin Weinberg <[redacted]>

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted] cell

==========

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prohibited.

--- On Wed, 4/22/15, Hill, James E. <[redacted] wrote:

> From: Hill, James E. <[redacted]>
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: "[redacted]" <[redacted]>
> Date: Wednesday, April 22, 2015, 1:57 PM
> #yiv0232406113
> #yiv0232406113 --
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> 0 0 0 0 0 0 0 0 0;}
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> 5 2 2 2 4 3 2 4;}
> #yiv0232406113
> #yiv0232406113 p.yiv0232406113MsoNormal, #yiv0232406113
> li.yiv0232406113MsoNormal, #yiv0232406113
> div.yiv0232406113MsoNormal
> {margin:0in;margin- bottom:.0001pt;font- size:11.0pt;}
> #yiv0232406113 a:link, #yiv0232406113
> span.yiv0232406113MsoHyperlink
> {color:blue;text- decoration:underline;}
> #yiv0232406113 a:visited, #yiv0232406113
> span.yiv0232406113MsoHyperlinkFollowed
> {color:purple;text- decoration:underline;}
> #yiv0232406113 p.yiv0232406113MsoPlainText, #yiv0232406113
> li.yiv0232406113MsoPlainText, #yiv0232406113
> div.yiv0232406113MsoPlainText
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> From: Martin Weinberg
> [mailto:[redacted]
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> April 22, 2015 1:44 PM
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> 1000 Boston, MA 02116 [redacted] cell
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> is prohibited. ----------On Tue, 4/21/15, Hill,
> James E. [redacted]>
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: [redacted]"

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> <[redacted]>,
> [redacted]"
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> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> 6060 [redacted] (cell) [redacted] (cell [redacted]
> (ofc) [redacted]
>

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Wednesday, January 20, 2016 10:21 AM
To: [redacted]
Subject: Re: Help!

Importance: High

i appreciate your support is what i meant. has anyting happened recently? it is my birthday today

On Tue, Jan 19, 2016 at 10:46 PM, [redacted] <[redacted]> wrote:

Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.

On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

i appreciate it. I should be back feb 14,

On Tue, Jan 19, 2016 at 6:39 PM, [redacted] <[redacted]> wrote:

Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

--

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HOUSE_OVERSIGHT_022937

From: jeffrey E. <jeevacation@gmail.com>
Sent: Thursday, January 21, 2016 1:43 AM
To: [redacted]
Subject: Re: Help!

Importance: High

what do you suggest?

On Wed, Jan 20, 2016 at 7:19 PM, [redacted] <[redacted]> wrote:

Happy birthday, I remember the few I had spent with you, good memories!

The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.

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HOUSE_OVERSIGHT_022938

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HOUSE_OVERSIGHT_022939

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HOUSE_OVERSIGHT_022940

From: jeffrey E. [jeevacation@gmail.com]
Sent: 5/24/2017 11:04:43 PM
To: Matthew Hiltzik [redacted]
Subject: Fwd: Fw: inquiry re: Giuffre v Maxwell settlement
Attachments: image001.png

Privileged - Redacted

---------- Forwarded message ----------
From: **Martin G. Weinberg** [redacted]
Date: Wed, May 24, 2017 at 6:53 PM
Subject: Fw: inquiry re: Giuffre v Maxwell settlement
To: jeevacation@gmail.com, [redacted], [redacted]

Privileged - Redacted

From: Hill, James E.
Sent: Wednesday, May 24, 2017 6:33 PM
To: [redacted]
Subject: inquiry re: Giuffre v Maxwell settlement

Good afternoon, Marty:

This is James Hill at ABC News.

Do you have any statement you wish to share on behalf of Mr. Epstein regarding the settlement reached in the defamation suit filed by Virginia Giuffre v. Ghislaine Maxwell?

I know from the court filings and hearing transcripts, that Mr. Epstein was deposed in this action, but was not expected to be called as a live trial witness.

According to the transcripts - it was represented by plaintiff's counsel during pre-trial hearings, that Mr. Epstein invoked his 5th amendment rights and declined to answer substantive questions during the deposition. It also appears that Judge Sweet had not yet made a final determination as to whether Mr. Epstein's depo, or selected portions thereof, would be admitted at trial (which is obviously a moot point, now).

If you believe any of that to be in error, and/or if you wish to provide a statement about the settlement or in response to Giuffre's allegations about your client, please give me a call or reply to this email.

If you have no comment, I'd appreciate you letting me know that.

Thanks

James

James Hill

Sr. Producer

ABC News

190 N. State St.

Chicago IL 60601

[redacted] (cell)

(cell)

(ofc)

james.e.hill@abc.com

@jameshillabc

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 10:35:08 AM
To: Michael Wolff [[redacted]]
Subject: boies

http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/

right on time, i didnt know. boies is his co counsel. . represents [redacted] that claims that al gore , and clinton were both on the island. he knows its not true , or could clearly ask hif former clients.

--

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 10:42:23 AM
To: Landon Thomas [redacted]

Importance: High

http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted], who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.

boies is going to be in the firiing line. from the biz view he represented Hank Greenburg AIG, , his fees were never paid as the appeals court overturned the win. but AIG as an insurance co. -- ... phone only

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 2:55:20 PM
To: Thomas Jr., Landon [redacted]
Subject: Re:

Importance: High

As they are both bulkshitters

On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:

i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?

On Tue, Nov 7, 2017 at 5:42 AM, jeffrey E. <jeevacation@gmail.com> wrote:

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 3:10:06 PM
To: Thomas Jr., Landon [[redacted]]
Subject: Re:

Importance: High

All. With gods help ;)

On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:
Did your Saudi friends survive the purge?

On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:
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Financial Reporter
New York Times

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/8/2017 1:49:52 PM
To: Thomas Jr., Landon[redacted]
Subject: Re:

MONEY!!!! he lost the fee for hank greenburg, and needed money for his firm. if you look into boies and AIG you will find the answer

On Wed, Nov 8, 2017 at 8:48 AM, Thomas Jr., Landon <[redacted]n> wrote:
Re Boies, Voila. https://www.nytimes.com/2017/11/07/business/weinstein-lawyer-david-boies.html. Unclear to me why he is getting involved with you....

On Tue, Nov 7, 2017 at 10:10 AM, jeffrey E. <jeevacation@gmail.com> wrote:
All. With gods help ;)

On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:
Did your Saudi friends survive the purge?

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It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men. On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's most rarefied economists.

Epstein's apartness or parallel life in part reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class.

Epstein's way to riches was to become a student of such wealth as it has grown to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

"In the past, only governments had this kind of money," says Epstein making something of a pedagogical point, "money of a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to

change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of dough, without causing more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about their money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that every American billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 30 years, most well before that, meaning $2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it makes your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege and wealth, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most dogged press antagonists—"one of America's most notorious sex offenders."

Epstein might be among the most reviled men of the time, and yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsider's fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (Many, in fact, have accused him of making up his own fantasy.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, it's a recognizable sort of hamish atmosphere, with an acknowledgement that a generally "think Yiddish" point of view prevails).

It often crosses my mind, when I am invited here, that I must have made a Faustian bargain—so Faustian that I am not even aware of it. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sorely, unluckily, and—in the eyes of many, in the eyes of *most*, rightly—offended time and place and sent him to prison.

And yet here he is, in his 50,000 square foot mansion, despite his sex offender status, dispensing advice to world leaders and business titans.

It is Bill Gates who for some time has been prodding Epstein to begin a process of public rehabilitation. Epstein has been advising Gates on a vast expansion and restructuring of the Gates foundation. Hence, as part of an effort to get "out in front" of the unfavorable notice that might be expected to greet Gates' public association with Epstein, I, as a favored journalist, have been given a degree of carte blanche to write about Epstein's life, with the hope, on Epstein's part, that the high regard in which he is held by many highly regarded people might leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping, if not preposterous, recent allegations.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case.

Eight years after the original filing, a Florida lawyer was now seeking to add new plaintiffs to the old case, accompanied by sensational allegations connecting a catch-all of bold-faced names associated with Epstein, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring.

I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti-royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he pointed out, he'd been to lunch in a restaurant (a not particularly pleasant experience for him and we were out in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: an incredulous guffaw. Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his floating residences—the ranch in New Mexico, the vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you dare look at me? Or it seems he is just oblivious to what other's are thinking. A sort of fatal tone deafness.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Once, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's effort was to identify a dozen or so promising algorithms (each quant is

effectively hawking his secret sauce algorithm) and invest up to $5 million with each. (Epstein's advantage here, over traditional investment firms, is that he was proposing to do this without needing to own the algorithm itself, the manner in which many firms operate to the disadvantage of the quants.) I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics. (Epstein demands a certain amount of pedagogical attention in return for a wealth of information.)

Hefnerian prurience becomes quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities—really not that different from any of the art galleries in the surrounding neighborhood.

The Epstein house/office is, not unlike many nearby galleries, an ultimate club, a private reserve, a place of shared and valuable information—indeed, the kind of place, that, even for the most ardent conspiracists, might seem a little too movie-like. And while it's hard to explain why, given the radio-active nature of Epstein's disgrace, the rich and powerful still beat a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, TK, TK, TK.

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of East, entertained that evening a delegation from Qatar, including **Sheikh Hamad**, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused demeanor, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland. (Epstein: "You actually believe he was getting fucked?" Weingarten: "From minute one.

I'm not a virgin. But his was the worst I've ever seen. It was like an assassination.)

After a short discussion of the Qartarian's visit—Epstein is serving the chocolate, made from pistachios grown on the Shakes farm—and speculation about who actually controls ISIS, I am asked to leave the room. Twenty minutes later, after what ever business has been transacted or particular confidences, shared I am asked back in.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I find that question as mysterious as you do," says Weingarten.

Shortly after Weingarten leaves, Epstein tells me that Eric Holder will resign by the end of the week—which he does.

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brook Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Shakes chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in what in some dramatic understatement, "you are going to have some low quality characters playing the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omlet, able to defend both

Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein.

Larry Summers wife, Elisa New, drops by. She teaches Americna poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

MORE…TK

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because, no matter their public bows to modern manners, they simply don't care that he offends every aspect of feminist sensibility; when it comes to power, feminism doesn't count.

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In Epstein's Paris apartment, 20,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. The single book on his bedside table is Lotlita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

Epstein is the Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as

though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional bona fides which makes me in some sense one of the few independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, the Euro, and the Danish Krone have all born out.

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful.

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. In some sense, Epstein is just one version, picaresque, as well as louche, of this shared story.

Epstein was born in 1953 in Coney Island. His father worked for the city's Parks Department. His mother was a housewife. He has a younger brother, Mark. Epstein was distinguished by little other than his math talents. The captain of the math team at Lafayette High school in Bensonhurst, goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by slight of hand or deft misrepresentation, gets a job teaching math and physics at Dalton in 1974.

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled not long ago as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and father of one of Epstein's students (Cynthia, the

half sister of the Times' current publisher), tried to recruit Epstein to come to the Times. Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the his country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you are super smart in math and your Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart why don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility. With a facility for getting along with rich men, he transforms at an even faster rate than others being quickly transformed.

He moves into a new building at 66th Street and Second Avenue—the Maxwell Plum era when the 60s on Second was the glamour address—a building full of "actresses, models, and super stars."

And yet, the Wolf of Wall Street model may be off here. If on one side of Wall Street there were the salesmen, on the other side there was a new level of acute abstraction and the people who could embrace it.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I did create it. This was intellectual activity of a fairly high order."

Still, in Wolf of Wall Street-ish fashion, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I wanted sex. I liked women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the 1980s rich-family soap operas, Dallas and Falcon Crest.

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion, at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the great families of Europe. It's Euro trash pageantry.

"I don't take it seriously," Epstein recounts. "I'm not caught up in it. I'm not trying to make a billion dollars. There is no ultimate goal. Or its just to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events are serendipitous, I wouldn't decided where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: wealth was not a fixed issue. The super wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"While if you had a billion dollars the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife, how to avoid paying taxes on it. The traditional wealth services structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts geometrically increased.

"You can't spend a billion dollars, you can just relocate it to a different investment class. And you can't give away a billion dollars without

a vast staff, in effect going into the business of giving away money, yet another business you are unlikely to know anything about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. In essence, the formulation is, how can a person have enough money to merit increasing attention, but no clear way of having gotten it. Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

In the Epstein telling, he's representing a series of vastly wealthy people and families.

In a sense, he's their instrument, doing their bidding, and for a period describes himself as recovering money, as something like a private detective. If early in his career he might seem like a sort of George Peppard (there's a resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

He steps up his game and his relationship with the rich. He's not just doing their bidding or their investing, he's helping them to imagine the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth.

In essence, the response to this, as he becomes more public, as a function of envy and media, is "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi, for whom Epstein acted as a consultant.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech fortunes, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting next to Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, and both are helped by strategic relationships with the exceptionally wealthy. To say that Epstein, sitting next to the Princess, sticks in Carter's craw would be an understatement. Epstein becomes one of the "what do you know about him" figures in Carter's

gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "For you have no idea," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He acquires, from his client Limited Founder Les Wexner, the larges private house in Manhattan. He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island. He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich, is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein has become a more and more active backer of advanced scientific research—ultimately he will donate $30 million to Harvard for a theoretical physics research center—and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plan terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive. Epstein, looking more like a Palm Beach bon vivant than it would have been possible to imagine anyone could, was accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, to located this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's companions

were witty, poised, helpful as well as powerfully alluring (as though stewardesses bygone times).

At one point, sliding into the seat beside me, Geraldine Laybourne, then the head of the Nickelodeon network, whispered, with more awe than horror, "This could be the closest I've ever come to pure evil." (One more thing about this trip: Google founders, Larry Page and Sergey Brin, came out to see the plane and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. This magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward, who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible), went down a rabbit hole of possible questionable contacts who might or might not have been the source or sources for Epstein's wealth, seemed to get no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, well known for an operatic view about her reporting exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy

ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the mother of one of the massage parlor girls who have gone to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The place interview the girl, Saige Gonzales, who then supplies names of other girls. Some of whom are found to be younger than 18.

In the end, the police track down 18 girls—nine who are under 18—who give depositions describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail—a cold and forceful Epstein demanding that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow, nobody at this point alleges that he did anything to them.)

Epstein, vastly raising the stakes, calls Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case, bringing in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of gorgeous retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow seems weirder that he doesn't have sex with them.)

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the exploited and powerless.

Still, with a critical eye, it also quite appears to be a straightforward tale of prostitution. And even though some of the girls are minors,, age is not a distinguishing factor in a prostitution charge in Florida, nor in most places

(in New York, for instance, at this time soliciting sex with anyone over the age of is a class D misdemeanor calling for a 100 dollars fine).

In fact, Saige Gonzales told the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house.

The local sex crimes prosecutor, Lana Belhalevic, interviews the girls and determines that the offense is solely related to prostitution.

Dershowitz rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI's hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and who are threatened with prosecution as a party to Epstein's actions.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. Epstein finds himself caught in an inescapable moral quandary: how can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote are prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy. If it was a Dickensian world, he was caught in its legal system.

Certainly, the upshot of his dealings with the Justice Department seem to involve a farce-like logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates,

and lovers, or offers an ass-backwards sort of deal in which Epstein has to go to the Palm Beach authorities and convince them to charge him with an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree also to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself in their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13.

This hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence. Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached.

Then, Brad Edwards, Rothstein's former partner, sues the government in 2008 for abridging their rights under the Victim Rights Act (under which victims have the right to be consulted). In 2014, tries to ad Virginia Roberts, one of the original complainants, who has previously settled with Epstein, to the long-running suit—and is now, with Edwards, further suing him for $50,000,000.

Roberts who has been the most vocal of the accusers, with the Daily Mail being her prime outlet, emerges now, more than ten years after the fact, with what is billed as a memoir of her "sex slavery" with Epstein, written ten years after the fact. She names a number of people as being at Epstein's Island home, including Clinton and Al Gore and his wife, who Epstein insists were never there—proof available through secret service records.

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

The world cleanly divides, with Epstein (and friends) behind secure walls—looking out at an angry and uncomprehending world—and the Mail and social media and upholders of new norms, seeing Epstein as a useful and terrible symbol and baying for his blood.

He is all bad things rolled into one: the financier whose wealth is a product of abstraction rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an unreconstructed sybarite and feminist nightmare; an insistent Playboy in a correct and prudish world; someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus is to get married, he said he would rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

And worse, although he has been jailed for 18 months and paid out what may be as much as $20 million, he seems somehow to have gotten away with it too—that worst sin of all.

This is all, inevitably, a Gatsby-like story, except with none of the sentimentality or romantic longings accorded Gatsby—or at least that Nick Caraway and Fitzgerald accord him. Gatsby in New York Post and Daily Mail parlance would be a freaky financier too.

And that partly is the issue, Jeffrey Epstein story isn't one for black and white journalists. It's a complicated story, real but necessarily fictional, a long-running cable series, perhaps, not an ordinary good-bad, right-wrong tale, but a premium one, compelling precisely because it is about all the ambitions and impulses that we are afraid of, not least of all because for many of us they exist within ourselves.

How Prince Andrew shared a room at Epstein's Caribbean hideaway with a busty blonde who claimed she was a brain surgeon

By Angella Johnson

Updated: 21:26 EST, 12 March 2011

The official-looking document, left casually on a desk, marked the beginning of the end for Cathy and Miles Alexander's eight years managing Jeffrey Epstein's private Caribbean island, Little St James.

'It said Warrant of Arrest, in big bold letters,' recalls Cathy.

'I picked it up and saw Mr Epstein's name on it.'

Inside view: Catherine and Miles managed Epstein's private island for several years

Shocked, she ran out of the room to tell her husband 'something bad is going on'.

Indeed it was, for the shamed financier, a close friend of Prince Andrew (who visited the island at least three times), had been arrested the previous day for under-age sex activities.

But 24 hours after his arrest in July 2006, a visibly pale and shell-shocked Epstein stood in his designer kitchen complaining to the South African couple who had run his island paradise since 1999 that he was a victim of entrapment.

Speaking at their home in South Africa, where they live in semi-retirement, the Alexanders reveal they had watched with increasing concern the beautiful girls who paraded about the house topless or naked whenever their boss was in residence – until Cathy became so disturbed that she insisted they part company with Epstein in 2007, a year before he was sentenced to 18 months in jail for solicitation of prostitution.

Paradise retreat: Little St James, a private 72-acre island three miles off the east coast of St Thomas in the U.S. Virgin islands owned by America billionaire Jeffrey Epstein

'I saw some girls who I thought were very young-looking – about 16 or 17 easily – and it bugged me because I have a daughter and, although she was in her 20s, I didn't like the idea that another woman's child was in that situation. I didn't feel comfortable about it,' she said.

'They looked like they had stepped out of an underwear catalogue. They walked around with very few clothes on or lounged around by the pool with nothing on. It was like that most of the time. I was

concerned about their ages. A few of them looked very young and I couldn't help but wonder if their mothers knew where they were.

'One very young-looking girl was called Tila. I just thought, "You really shouldn't be here", but I made myself switch off as I had no proof.'

The couple, who have been married for 24 years, still find it hard to comprehend that Epstein is a convicted sex offender.

Island guest: Model Naomi Campbell stayed as a guest on Epstein's Caribbean island

'He was a very kind man and, while I don't approve of things he's been accused of, I liked him very much,' says Miles.

While Cathy says she was always suspicious about the girls' ages, Miles insists: 'I took the view that what went on behind closed doors was not my business and it is not my place to judge. If anything was going on we didn't want to know.

'Our job was about discretion. We have a clear conscience that we didn't witness anything untoward. Whatever went on at the other houses – and yes, we heard things from other members of staff – it didn't, to my knowledge, happen at our property.'

Miles also says that on several occasions he refused Epstein's requests to smuggle female guests in by boat, to circumvent the strict immigration policies of St Thomas, the island with authority over Little St James, which would have meant logging names and passport numbers.

But he was aware that Epstein found others to do his bidding. For as the couple were told when they were hired: 'What Jeffrey wants, Jeffrey gets.'

The words came from Ghislaine Maxwell, who was then Epstein's girlfriend. She flew to South Africa with Andrew Shannon, a lawyer, to interview the Alexanders in 1998, after they had replied to a small ad for 'management couple sought to run private island'.

After apparently passing the interview, they were invited to meet Epstein in New York.

'It was very strange,' said Miles. 'We were taken by a driver to an office near Madison Square Garden. A gentleman wearing a polo shirt and jeans stepped out of the lift, asked if we had a good trip, shook our hands and left. That was it. Then Miss Maxwell came back and said we had the job.'

Ghislaine then took them to 'the big house' in Manhattan, which is said to have been the scene of sex parties and where young girls were allegedly hired as playthings for Epstein's wealthy male friends.

‘We spent five days there shadowing the staff to see how they did things,’ says Cathy.

‘A dinner party was held on the fourth night, but it was very formal and businesslike. I saw no girls – young or otherwise – at the time. We would never have willingly put ourselves in that kind of situation.’

The following day they were flown to St Thomas and transferred by boat to Epstein’s island house, a sprawling single-storey complex with white walls and a blue roof, maintained by several gardeners, two boat captains, two laundry ladies and two other women who cared for the house.

Again the couple were there to observe, but after three days they were woken in the night by a phone call telling them they had to leave the island because a VIP was making an unexpected visit. They were later told by staff that the guest had been Prince Andrew.

They went back to New York, where Ghislaine explained more of their duties.

‘She said we had to keep quiet about what we saw or heard on the island,’ Cathy recalls.

‘She told us that although Mr Epstein and she were a couple, we would see lots of beautiful girls passing in and out, but that was his nature.

‘She said that he gets what he wants but that she was always the “Queen Bee” and the one in charge.

‘She often described herself in this way. Although she could be very friendly, I discovered that she was also rather arrogant.’

Miles took up his post in March 1999 and Cathy followed a month later. Miles realised the kind of lifestyle their boss enjoyed when, on his first day, Epstein arrived with five young ladies in tow.

‘One was definitely under age, but she had a letter of consent from her parents and was under the guardianship of a model agency,’ he says.

Friends in high places: Lord Mandelson has also vacationed on Epstein's island

The Alexanders admit finding a box of sex toys in Epstein’s bedroom, but insist they never saw nor organised any raunchy parties for him or his guests. Cathy recalls that Prince Andrew was the first guest to visit during their tenure.

‘The Duke came via helicopter with his bodyguard and a woman in her 30s, who said she was a brain surgeon,’ Cathy says dryly.

‘She was tall, bleached blonde and had big boobs. They shared a room and spent most of their time on the beach windsurfing, sailing or doing other water sports.

‘One day he came back into the house in great mirth. He said that his guest had stepped on a sea urchin and he urinated on her foot as a remedy. “The royal member has done its duty,” he chuckled. He was great fun and very undemanding.’

The Prince stayed for two weeks and left a tip of $350 (£220).

‘He slipped it into my hand when we said goodbye,’ says Miles.

‘It was unexpected because other guests didn’t.’

Andrew would visit at least once more, that they recall, with Ghislaine and Epstein.

‘He also flew over the island on his way to Montserrat after the volcano had erupted and got the pilot to dip the wings as a signal to us.’

The Prince’s ex-wife, Sarah Ferguson, who became embroiled in the Epstein controversy last week when it was revealed that she had accepted £15,000 from the sex offender to pay her debts, visited once with her daughters. Epstein refused a second request for her to visit on her own.

‘Lots of people came and went,’ says Miles. ‘It was like running a five-star hotel where no one paid.’

Others who passed through included model Naomi Campbell, who arrived for two days with what Miles and Cathy called her ‘coffin’ – a huge oversized trunk filled with clothes.

Peter Mandelson holidayed there with his long-term boyfriend Reinaldo, who suffered sunburn and whined about it ‘like a baby’, says Cathy.

Numerous academics, architects and some of the most prominent scientific and business minds also enjoyed Epstein’s generous hospitality.

‘I can only surmise he might have wanted favours from these people,’ Miles suggests.

For all his wealth, Epstein appears to have led a simple life on the island.

‘Dinner was very informal, he never drank alcohol and we rarely had it in stock.

‘He also had a habit of not eating meals in front of people. Instead he would have nibbles such as crab cakes in his room.’

His most obvious luxury on the island were his daily massages. Former Epstein ‘masseuse’ Virginia Roberts says these were usually little more than foreplay to a sex act.

According to the Alexanders, whatever went on was performed in his bedroom.

'We were warned by Miss Maxwell never to disturb him there. It was absolutely forbidden,' they say.

Between 1999 and 2004, Epstein would visit at least once a month and Ghislaine was invariably with him.

Miles says: 'In our final meeting, he told me I had always been his conscience. I'm certainly battling with my conscience now.'

Riddle of phone numbers for 'friends' he'd never met

Revealing an extraordinary network of power and influence, extending into the fields of politics, finance and showbusiness, Jeffrey Epstein's 'little black book' showed just how important a man he had become.

Yet when The Mail on Sunday contacted the people listed in the document, which was kept online, many said they had never met or even spoken to the disgraced financier.

And they were appalled to discover he had their contact details, often including home and mobile telephone numbers.

Lord Palumbo, the former Arts Council chairman and godfather to the Duke of York's eldest daughter Beatrice, said: 'I have never, never, met him. I am shocked I am in there. I am affronted. I don't know him at all.'

Never heard of him: Both Toby Young (left) and Sir Richard Branson, were surprised to find themselves listed in a contacts books owned by Jeffrey Epstein

Dame Gail Ronson, a charity fundraiser and wife of the multi-millionaire British developer Gerald Ronson, said: 'I've never, ever, met him. I swear, you've completely gobsmacked me. It's really distressing, horrible.

'I lead a very private life so to find out you're on this list, it's very unsavoury.'

Her shock was echoed by the celebrity milliner Philip Treacy.

'This sounds crazy, I'm amazed,' he said.

'I'm a hatmaker, I've never met Jeffrey Epstein and never had any reason to. I make hats. Does he look like the kind of person who would wear a hat? Bizarre.'

The 'book' also had numbers for the JCB tycoon Sir Anthony Bamford, but a spokesman insisted: 'There doesn't appear to be any connection. Sir Anthony doesn't know Jeffrey Epstein.'

The journalist Toby Young, said: 'I've never been within 100 yards of him and we move in completely

separate worlds. If you said I was in Colonel Gaddafi's Little Black Book I couldn't be less surprised.'

There were also numbers for the influential Rothschild family, including Sir Evelyn de Rothschild and his daughter Hannah. Last night she said: 'I have no idea why Mr Epstein would have my numbers as I don't know him.'

A print-out of the contacts book came to light after it was subpoenaed for use in a civil case against the financier by one of the young girls he employed as a masseuse.

The list included 16 numbers for Prince Andrew under his title The Duke of York.

His ex-wife, Sarah Ferguson, was entered under the Duchess of York and there were 18 numbers for her and her associates as well as an email address.

The 'book' also appeared to contain contacts of Epstein's former girlfriend Ghislaine Maxwell, including her extended family, friends and brief acquaintances.

One prominent journalist, who asked not to be named, was horrified to discover her parents' details were listed. She said: 'I knew Ghislaine once but that was more than 20 years ago. To be honest I find it really spooky.'

Artist Kate Stracher was also baffled by her inclusion.

She said: 'Ghislaine and I were at Oxford together but I haven't seen her since. I'm not at all glamorous and not at all well-connected. I definitely shouldn't be there.'

Others have had only the briefest of meetings. Philippe Amon, a Swiss industrialist, said: 'I think I came across Epstein some years ago in New York but I honestly don't think I would recognise him walking by in the street.'

A spokesman for Richard Branson said: 'Jeffrey Epstein has the island next door to Necker but Richard has literally only met him once for about five minutes. That's the extent of it.'

Those who clearly do have a connection are, perhaps unsurprisingly, less keen to talk about it.

Lisa Walker is listed alongside her friend Caroline Stanbury, a former girlfriend of Prince Andrew. She said: 'I met Epstein with Caroline.'

Asked if Prince Andrew was also present, Miss Walker said: 'I wish I could help but I don't think I should say any more.'

Police chief's fury over plea bargain

Leaned on: Police chief Michael Reiter

Michael Reiter was a popular small-town police chief with a lifetime's experience in finding the balance between patrolling the millionaire's playground of Palm Beach, Florida, and its blue-collar neighbour West Palm Beach, home to unglamorous social housing projects and trailer parks.

Throughout his 28-year career, he prided himself that his force treated the wealthy on his patch just the same as the very poorest. But his investigation into the lifestyle of predatory paedophile Jeffrey Epstein exploded his illusion that law enforcement could ever be impartial.

He soon discovered at first hand that a man such as Epstein, with almost unlimited wealth and influential friends including former President Bill Clinton, Prince Andrew and Israeli defence minister Ehud Barak, can effectively bend the law to his whim.

The 53-year-old police chief, who retired in 2009, was so furious at what he believed was obstruction by state prosecutors, who he felt had downplayed charges against Epstein, that he outlined his frustrations in an extraordinary letter to Florida state attorney Barry Krischer in May 2006.

He wrote: 'I must urge you to examine the unusual course that your office's handling of this matter has taken and consider if good and sufficient reason exists to require your disqualification from the prosecution of these cases.'

After failing to get a satisfactory response from prosecutors he believed had been 'got at' by Epstein, he referred the case to the FBI.

He wrote to one of Epstein's victims, saying: 'I do not feel that justice has been sufficiently served by the indictment that has been issued.'

Epstein's conviction for solicitation of prostitution came after an unprecedented plea bargain designed to protect him from future charges.

Mr Reiter later complained in sworn testimony connected to civil actions brought against Epstein that prominent politicians had repeatedly leaned on him to downplay the allegations against the financier.

Mike Fisten, an ex-FBI taskforce superviser who has led the campaign for the Epstein case to be reopened, said: 'Reiter went up against the entire town of Palm Beach to do what was right but he is not chief any more because of this.

'And eventually Epstein was given an immunity from prosecution deal the like of which I have never seen in my entire career.'

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From: paul krassner [redacted]
Sent: 5/5/2017 3:19:21 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: I ONLY FORWARD THIS SO YO'RE AWARE OF ITS EXISTENCE--pk
Attachments: facebook.png; twitter.png; google_plus.png; rss.png; email.png; Screen-Shot-2017-05-04-at-10.31.40-PM-410x220.png; Black-teen-confronts-white-teacher-over-racials-slur-Twitter-410x220.png; Texas-Governor-Greg-Abbott-410x220.jpg; Joe-Scarborough-MSNBC-410x220.png; Sad-Paul-Ryan-via-twitter-410x220.png; Sen.-Bill-Cassidy-CNN-410x220.png; Screenshot-814-410x220.png; trumpepstein2-410x220.jpg; Big-Bang-Theory-1-410x220.jpg; Screen-Shot-2017-05-04-at-8.56.43-PM-410x220.png; default.gif; Sad-Paul-Ryan-via-twitter-290x156.png; Tennessee-Gov-Steve-Bashear-via-screencap-300x161.png; Sad-Paul-Ryan-via-twitter-300x161.png; Sen.-Bill-Cassidy-CNN-300x161.png; A-judges-gavel-Shutterstock-300x161.jpg; Screenshot-814-300x161.png; Rep.-Barbara-Comstock-Facebook-300x161.png; Big-Bang-Theory-1-300x161.jpg; Ivanka-Trump-ABC-News-300x161.png; a45-300x161.jpg; Black-teen-confronts-white-teacher-over-racials-slur-Twitter-300x161.png; Robert-Reich-2-300x161.jpg; Joe-Scarborough-MSNBC-300x161.png; Screen-Shot-2017-05-04-at-10.31.40-PM-300x161.png; rs-footer-email-icon.gif

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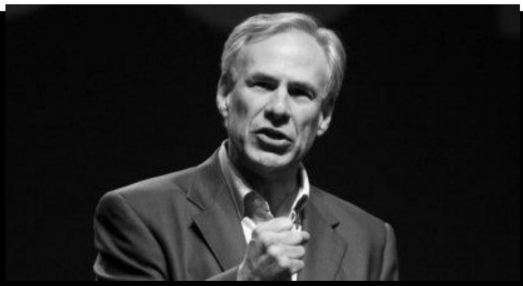

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Sex slavery lawsuit links Trump's Mar-a-Lago to pedophile ring: report

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04 MAY 2017 AT 16:45 ET
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Jeffrey Epstein (left, via YouTube screengrab) and President Donald Trump (right, via Creative Commons)

DON'T MISS STORIES. FOLLOW RAW STORY!

Last fall's **allegations of sexual assault against President Donald Trump** failed to stop his presidency, but one of the more explosive of those allegations is once again making headlines. ***POLITICO* reported that a new lawsuit** reveals details linking Trump to billionaire pedophile Jeffrey Epstein, a convicted sex offender. The reports indicate that one lawsuit contains information about Virginia Giuffre who alleges that she met Epstein while working as a towel girl at Mar-a-Lago when she was 15 before being recruited into "sexual slavery".

Giuffre's case is set to appear before a judge on May 15, and although her **accusations against Epstein** have been public for some time, this is the first time the detail about her employment at Mar-a-Lago has been included.

Last summer, the **Trump-Epstein connection** made headlines when Trump was slated to win the Republican nomination, and just before the election, a woman came forward **alleging that Trump raped her when she was 13** at one of Epstein's parties — only to drop suit a few days later.

In 2015, Trump lawyers denied claims of the **then-candidate's involvement with Epstein** by saying their only relation was that Epstein was "one of thousands of people who has visited Mar-a-Lago". Those claims that fly in the face of a **2002 *New York Magazine* interview** in which Trump claimed to have known Epstein for 15 years.

"He's a lot of fun to be with. It is even said that he likes beautiful women as much as I do, and many of them are on the younger side. No doubt about it — Jeffrey enjoys his social life," Trump told reporters.

Report typos and corrections to corrections@rawstory.com

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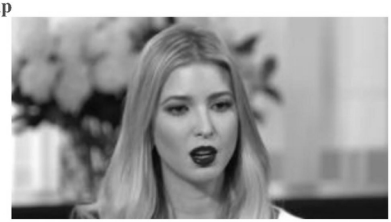
- 
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- [illegible] ': Watch a black teen confront his white teacher who insists on [illegible]

- [illegible] pcal[illegible] p actions — i[illegible] ble for its 'unnecessary cruelty'

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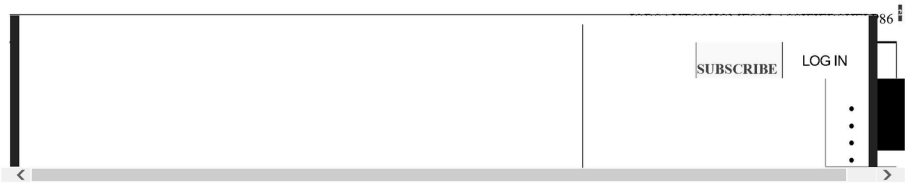
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How many degrees of separation between Trump and sex offender Epstein?

Jane Musgrave Palm Beach Post Staff Writer
2:47 p.m Friday, May 12, 2017 Homepage

President Donald Trump at the White House on Wednesday, May 10, 2017. (AP Photo/Evan Vucci, File)

PALM BEACH President Donald Trump is a shadowy, but ever-present, figure in the never-ending saga of billionaire sex offender Jeffrey Epstein.

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Mar-a-Lago, the commander-in-chiefâ€™s private-club-turned-southern-White-House in Palm Beach, was the backdrop for Epsteinâ€™s introduction to one of his dozens of teenage victims, according to court records.

In a short-lived lawsuit that Trump decried as â€œcategorically false,â€ a California woman last year sued Trump and Epstein in federal court in New York City, claiming the two business tycoons raped her when she was 13 years old.

And Trump is on a star-studded witness list for an upcoming trial in Palm Beach County Circuit Court that attorney Jack Scarola promises will be the first public airing of Epsteinâ€™s lurid lifestyle.

But, Scarola acknowledges, it is unlikely the president will be part of what Scarola promises will be a salacious trial in the fall.

Click here to find out why.

Will President Trump be used as witness in sex offender Epstein case?

By Jane Musgrave - Palm Beach Post Staff Writer

Wealthy Palm Beacher Jeffrey Epstein in Palm Beach County Circuit Court in 2008 to plead guilty to criminal charges him sexual massages. (Uma Sanghvi/The Palm Beach Post)

Updated: 3:43 p.m. Friday, May 12, 2017 | Posted: 2:45 p.m. Friday, May 12, 2017

PALM BEACH — President Donald Trump is a shadowy, but ever-present, figure in the never-ending saga of billionaire sex offender Jeffrey Epstein.

Mar-a-Lago, the commander-in-chief's private-club-turned-southern-White-House in Palm Beach, was the backdrop for Epstein's introduction to one of his dozens of teenage victims, according to court records.

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And Trump is on a star-studded witness list for an upcoming trial in Palm Beach County Circuit Court that attorney Jack Scarola promises will be the first public airing of Epstein's lurid lifestyle.

But, Scarola acknowledges, it is unlikely the president will be part of what Scarola promises will be a salacious trial. Scarola claims Epstein sued attorney Brad Edwards in an effort to intimidate and punish the lawyer for representing some of Epstein's victims. While Epstein dropped his lawsuit against Edwards, who has also represented clients in a lawsuit against Trump, the malicious prosecution suit against Epstein will likely go to trial in the fall, Scarola said.

When Scarola put Trump on the witness list in August, he said he never imagined the business scion and former television star would soon occupy the Oval Office. The legal battle he would have to launch to get a sitting president to testify simply isn't worth it, Scarola said.

Moreover, while there is a lot of smoke around Trump's relationship with Epstein, there appears to be little fire, so far, Scarola said.

"Based on all available public records, Trump's involvement is peripheral," he

said.

»RELATED: The Post's complete President Trump coverage

While Trump has recently distanced himself from Epstein, a 64-year-old financier, it wasn't always that way.

"I've known Jeff for fifteen years. Terrific guy," Trump said of Epstein during a 2002 interview with New York magazine. "He's a lot of fun to be with. It is even said that he likes beautiful women as much as I do, and many of them are on the younger side."

Attorney Spencer Kuvin, one of dozens of lawyers who successfully sued Epstein on behalf of roughly 30 women who claimed he lured them to his Palm Beach mansion for sexually-charged massages when they were as young as 14, said he always found the comment curious.

"How would he know that?" he said of Trump's acknowledgement of Epstein's penchant for young women. The interview came nearly six years before Epstein's secret sex life exploded into public view when the money manager pleaded guilty to Florida charges of procuring and soliciting a minor for prostitution. "Why would he make a joke like that?" the West Palm Beach attorney asked.

Further, Kuvin and others say they can't believe it is purely coincidental that former South Florida U.S. Attorney Alex Acosta, who signed off on a non-prosecution agreement that kept Epstein from spending years behind bars, was tapped by Trump to be U.S. Labor Secretary.

During his confirmation hearings in March, Acosta said it was "awful" that convicted sex offender Epstein was allowed to leave the Palm Beach County Jail to work during his 13-month jail sentence. But he insisted that without the involvement of his office, Epstein would have received far less punishment and his victims wouldn't have recovered any money from him. As a result of the conviction, Epstein also is on Florida's registered sex offender list.

Scarola, who has represented several of Epstein's victims in civil lawsuits, scoffed at Acosta's claims. The evidence that Epstein sexually abused young girls was "overwhelming," he said.

The answer to the many questions that still swirl around Epstein and his high-placed friends are the subject of roughly a half-dozen lawsuits that are still pending in both Palm Beach County and New York. Some of the nation's top attorneys have represented Epstein and some of his victims.

But like many of the past lawsuits spawned by Epstein's behavior, most of the remaining ones are expected to be settled. And even public court records don't tell the full story — because many documents have been sealed or are heavily redacted.

For example, a defamation lawsuit against one of Epstein's close friends was scheduled to go to trial in U.S. District Court in New York this coming Monday. But both sides agreed to a delay last week, often a signal that a settlement could be in the works.

The suit was filed by Virginia Roberts Giuffre against British-born socialite and longtime Epstein friend Ghislaine Maxwell. In a 2009 lawsuit that Epstein settled for an undisclosed amount, Giuffre claimed she was 15 when Maxwell recruited her from her $9-an-hour job in the locker room at Mar-a-Lago, where her father had a job as a maintenance worker. Giuffre claims in court records that Maxwell introduced her to Epstein and that Epstein turned her into his international sex slave.

Maxwell wasn't sued as part of the lawsuit Giuffre filed against Epstein. But, in court papers filed by Giuffre, Maxwell was accused of grooming Giuffre to be Epstein's sexual toy.

Maxwell ignored the allegations until Giuffre raised them again in December 2014 and Maxwell began publicly disputing Giuffe's claims. Famed attorney David Boies then filed a defamation lawsuit on Giuffre's behalf, claiming Maxwell "undertook a concerted and malicious campaign to discredit Giuffre." In media interviews, Maxwell called Giuffre's claims "obvious lies," Boies wrote.

The trial promised to provide scurrilous details about Giuffre's widely publicized contention in court records that Epstein not only used her but loaned her to his rich and powerful friends, including such notables as Prince Andrew and former President Bill Clinton. Similar claims against nationally-known attorney Alan Dershowitz, who represents Epstein, were withdrawn when the Harvard law professor and Giuffre's attorneys reached a confidential settlement in dueling defamation lawsuits they filed against each other over the allegations.

Flight logs from Epstein's private jet show Clinton was a frequent flyer, taking Secret Service agents along with him on trips with Epstein around the globe. Clinton has publicly ignored Giuffre's allegations but an independent investigation launched by Dershowitz raised questions about their veracity.

One of Epstein's longtime servants testified that Prince Andrew was a regular guest at Epstein's house and received massages during the visits. But house manager Juan Alessi acknowledged in a sworn deposition that older women and men offered Swedish massages to Epstein's guest. It is unclear who gave the British prince the massages or what was included. The prince has vehemently denied Giuffre's allegations.

Alessi also testified that Trump visited Epstein's home when both were in Palm Beach. "He would come, have dinner. He never sat at the table," said Alessi, who described himself as Epstein's majordomo. "He eat with me in the kitchen."

But, Alessi said, unlike other visitors, Trump didn't avail himself of massages. "No," he said. "Because he's got his own spa."

While Giuffre's defamation lawsuit appears headed for what will likely be a confidential settlement, Scarola said his case against Epstein is going to trial even though Trump won't be called as a witness.

"We can prove our case without Donald Trump's testimony," he said of malicious prosecution lawsuit he filed against Epstein for suing Edwards, the attorney who has represented Giuffre and several of Epstein's other victims.

Edwards has also been leading a separate charge to prove Acosta's office violated the federal Crime Victims' Rights Act when it signed off on the non-prosecution agreement without notifying the women. That suit, which has stalled in federal court after many of the documents were sealed, could eventually reveal why Epstein got what many call a "sweetheart deal," Scarola said.

Edwards also represented 65 members of Trump National Golf Club Jupiter, who won $5.8 million in February when a federal judge ruled that Trump improperly kept their deposits when he took over the club on Donald Ross Road in Jupiter in 2012. Trump is appealing the decision.

From: Darren Indyke [[redacted]]
Sent: 5/26/2016 3:18:43 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Fwd: Maxwell ([redacted]
Attachments: IMAGE.jpg; IMAGE.jpg; IMAGE.jpg

Importance: High

Privileged - Redacted

DARREN K. INDYKE
DARREN K. INDYKE, PLLC
575 Lexington Avenue, 4th Floor
New York, New York 10022
Telephone: [redacted]
Telecopier: [redacted]
Mobile: [redacted]
email: [redacted]

****
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Begin forwarded message:

From: "Miles Alexander" <[redacted]>
Subject: Fwd: Re: Maxwell ([redacted])
Date: May 24, 2016 at 11:35:17 AM EDT
To: <[redacted]>

Hi
Answer to questions asked.
No response received
Regards

Miles Alexander
Operations Manager

Michaelhouse Pvt Bag X1 Balgowan KwaZulu-Natal 3275 South Africa
Telephone [redacted] Facsimile [redacted] www.michaelhouse.org
>>> Miles Alexander <[redacted] 2016-05-18 05:56 PM >>>
Hi
Cathy and I have discussed your questions. At this stage we do not feel it is beneficial and may negatively impact our privacy to answer the questions.
Please respect our request not to assist.
Regards

Sent from my iPhone

On 18 May 2016, at 16:01, Brad Edwards <[redacted]> wrote:

Thank you for your response. My initial questions are fairly general I believe.

Was Former Pres Clinton ever a guest on the island?
Was George Mitchell a guest?
Would any of the guests get massages from the girls brought by Mr. Epstein or Ms. Maxwell?
Do you remember [redacted]?
What was her interaction with Ms. Maxwell?
How many massages would Mr. Epstein get per day? I understand that the massages happened in a location where, based on the article I read, Ghislaine instructed you to never go while in use. But I am curious knowing - were the massages done by the various young girls brought to the island? Did they appear to be massage therapists? I think I know that answer based again on the previous article I read.

Were you aware of Ghislaine flying a helicopter? Flying girls to the island? Flying guests to the island?
What did you understand Ghislaine's role to be? How did she describe herself or act while there? If she was the "queen bee" girlfriend, then what was her explanation of the presence of the other younger girls? And what interaction did Ghislaine have with those girls? It is our understanding that one of her primarily "jobs" was to find the girls to bring to Mr. Epstein but we do not yet have a firm understand where she found them or what interaction she personally had with each of them while on the island. I was hoping you could provide some clarity based on things you heard or observations you made.

Again, thank you for any clarification you can provide. I am interested in the facts, including any inaccuracies that have been reported in the past which may have given us a misunderstanding of anything.

Sincerely,

Brad

Sent from my iPhone

On May 18, 2016, at 4:05 AM, Miles Alexander <[redacted]> wrote:

Greetings
Thank you for your letter and sentiments contained there in.
Cathy and I have read a number of articles that have appeared in the press over the past few years. In the cases where statements are credited to [redacted] I can honestly say that we cannot agree to the statements made and therefore do not see what further info you need. For example, the notion that we served or witnessed the stated alleged acts or parties are untrue.
If you wish to take this further, please supply a list of questions you think are pertinent and we will then decide if any need answering .
Regards

Miles Alexander
Operations Manager

Michaelhouse Pvt Bag X1 Balgowan KwaZulu-Natal 3275 South Africa
Telephone [redacted] Facsimile [redacted] www.michaelhouse.org

>>> Brad Edwards <[redacted]> 2016-05-17 07:42 PM >>>
Dear Miles and Kathy Alexander,

I, along with several other attorneys, represent [redacted] She needs your help and we are hoping for your assistance. She doesn't need much. In fact, all she needs are some good, honest people who are willing to just tell the truth. That seems like a simple request that any compassionate person would accommodate; however, for some reason many people have instead decided to stay out of it and allow [redacted] to continue to suffer. A small number of good people have stood up for what is right and told the truth. We do not currently know where you stand but we know that you have helpful information and are hopeful that you will cooperate in sharing that information with us.

I have investigated various related aspects of this unfortunate story for 8 years now. [redacted] is one of numerous clients I have represented in related matters. And [redacted] only wants one thing - for the truth to be known and for her story to protect others. She was a teenager when she was recruited to travel with Ghislaine Maxwell and Jeffrey Epstein. After 2 years she escaped that life and lived in [redacted], hoping to forget what she had been through. After Mr. Epstein was arrested for doing similar things to other girls that he had done to her, [redacted] decided to speak out about what really had transpired while traveling with Maxwell and Epstein, including events that occurred on Little St. James.

She remembers you and your wife fondly. We read the interview you gave a few years back. There can be no doubt that we absolutely appreciate the probably unwanted media attention that your previous interview drew. We are not at all looking for a second round of that. We are not the media. We do not need any public interview. We are not concerned with anything other than the facts, from your own observations or what you heard while working on the island. We just want to speak with you.

[redacted] came back to the United States to help others similarly victimized. Specifically, she started a non-profit charity to help sex abuse victims. She very bravely told her story with the goal of starting a new life helping others. Unfortunately, Ms. Maxwell told the world that [redacted] was lying, which has thus far had the impact of destroying [redacted]'s charity. We are in litigation with Ms. Maxwell where we have to prove something that should be very simple - that [redacted] is in fact telling the truth in her story of being recruited by Ms. Maxwell to travel and "work" for Mr. Epstein. We know she is being truthful. We also know that there are numerous witnesses who also know she is. But many of the witnesses still work for Mr. Epstein or cannot be located.

[redacted] - as well as any others similarly situated - deserves the truth. And that is all we are trying to capture for her. We promise not to let anyone in the media know we are talking to you. We are not looking to drag you into anything. We are not looking for anything at all more than the truth, and Virginia has told us that of all the people who worked for Mr. Epstein you were the most likely to help.

I hope this email finds you well. I apologize for emailing you at an address that appears to be a work address. It is all I had. If there is a time when you would be so kind as to talk with me, I would be most grateful. You can email me. Call me. Set up a time for me to call you. Whatever is most convenient for you. Thank you for anything you are able to do.

Sincerely,

<IMAGE.>
Brad Edwards
Board Certified Trial Attorney
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
[redacted]
<IMAGE.>

<IMAGE.jpg> <IMAGE.jpg> <IMAGE.jpg>

This email message is subject to the Michaelhouse Email disclaimer which can be viewed at
http://www.michaelhouse.org/email_Disclaimer.aspx

This email message is subject to the Michaelhouse Email disclaimer which can be viewed at
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From: Scott J. Link[redacted]
Sent: 11/28/2018 11:50:16 PM
To: E. jeffrey [jeevacation@gmail.com]
CC: [redacted]
Subject: Fwd: Press Inquiry: Miami Herald expose and protective order

Importance: High

Scott J. Link
Board Certified Business Litigation

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
office [redacted] | fax [redacted]
| Email: [redacted]

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Begin forwarded message:

From: CNS Adam Klasfeld [redacted]
Date: November 28, 2018 at 6:34:54 PM EST
To: '[redacted]
Subject: Press Inquiry: Miami Herald expose and protective order

Dear Mr. Link:

A transcript made public today show how Ghislaine Maxwell's legal team fought for and ultimately won a broad protective order in the lawsuit filed by accuser Sarah Ransome against your client Jeffrey Epstein. It also shows the Maxwell legal team's concern about the media coverage, especially from the Miami Herald, weeks before it published today's bombshell investigation today.

My questions are:

What is your response to the Miami Herald story published today?

How would you respond to the series' allegations that there has been a more than decade-long cover-up of Epstein and his powerful associates, including by Trump's current secretary of labor Alexander Acosta?

Please reply ASAP as I am on deadline.

Thank you,

Adam Klasfeld

Reporter, Courthouse News
[redacted] (cell/Signal)
[redacted]

PGP Fingerprint for personal email: F427 EE3B 6F05 E5D5 785B 775B 2C74 683C 219D 91DC

Twitter: @KlasfeldReports Skype: [redacted]
www.adamklasfeld.com

Alan Dershowitz suggests curbing press access to hearing on Jeffrey Epstein sex abuse

By JULIE K. BROWN
Miami Herald

MIAMI — A court hearing on whether to unseal sensitive documents involving the alleged sex trafficking of underage girls by Palm Beach multimillionaire Jeffrey Epstein — and the possible involvement of his influential friends — will play out in a New York City courtroom this week.

But it may happen behind closed doors, with the news media and public barred — at least in part.

An attorney for lawyer Alan Dershowitz wrote a letter to the U.S. District Court Second Circuit of Appeals on Tuesday, asking whether the media should be excluded from the proceeding because his oral arguments on behalf of his client could contain sensitive information that has been under seal.

The appeals court has not responded to his concern as of Friday, but if the hearing is closed during his lawyer's argument, it would represent the latest in a long history of successful efforts to keep details of Epstein's sex crimes sealed.

Dershowitz, a professor emeritus at Harvard, constitutional law expert and criminal defense attorney, represented Epstein, who in 2008 received what many consider an unusually light sentence for sexually abusing dozens of girls at his Palm Beach mansion. Two women — one of whom was underage — have said Epstein and his partner, British socialite and environmentalist Ghislaine Maxwell, directed them to have sex with Dershowitz, 80, and other wealthy, powerful men. Dershowitz and Maxwell have denied the claims.

Oral arguments are scheduled Wednesday to hear an appeal by the Miami Herald and other parties seeking to unseal a 2015 court case involving Epstein and Maxwell. The Herald, as part of an ongoing investigation into Epstein's case, hopes to shed more light on the scope of Epstein's crimes, who else might have been involved and whether there was any undue influence that tainted the criminal justice process.

A legal brief supporting the Herald's appeal was filed in December by the Reporters Committee for Freedom of the Press and 32 other media companies, including The New York Times, The Washington Post, Dow Jones, Fox News, Gannett, Politico, Reveal Center for Investigative Reporting and Tribune Publishing Co.

The case — which was settled in 2017 — involved Virginia Roberts Giuffre, who sued Maxwell in federal court in the Southern District of New York in 2015. Giuffre has asserted that Maxwell and Epstein trafficked her and other underage girls, often at sex parties that Epstein hosted at his homes in New York, New Mexico, Palm Beach and the Virgin Islands.

File photo by GETTY IMAGES

Alan Dershowitz wants to keep the public, and news media, out of a hearing in New York this week in which a judge is being asked to unseal sensitive documents involving Jeffrey Epstein and the alleged sex trafficking of underage girls.

The case — which was settled in 2017 — involved Virginia Roberts Giuffre, who sued Ghislaine Maxwell in federal court in the Southern District of New York in 2015. Giuffre has asserted that Maxwell and Epstein trafficked her and other underage girls, often at sex parties that Epstein hosted at his homes in New York, New Mexico, Palm Beach and the Virgin Islands.

Maxwell called Giuffre a liar, resulting in Giuffre suing for defamation.

As the case was litigated, the judge allowed a vast trove of documents, including testimony by witnesses, to be sealed. Dershowitz, having been publicly implicated in Epstein's crimes by Giuffre, tried unsuccessfully to get the judge to unseal a select number of documents that he says will exonerate him. Blogger Michael Cernovich also filed a motion to release a portion of the sealed documents.

The judge denied their motions in 2016, as the case was still ongoing, saying that release of the documents could taint a potential jury pool.

After the case was settled, the Herald filed a more extensive motion, arguing that with the case now closed, all the documents in the case should be made public. The motion, filed in April 2018, came as the Herald was working on an investigative series, Perversion of Justice, which detailed how Epstein and his lawyers manipulated federal prosecutors to obtain one of the most lenient sentences for someone who sexually abused children in history.

Dershowitz's lawyer, Andrew G. Celli Jr., emphasized to the Herald that Dershowitz is not trying to ban the media from the proceeding; he is simply giving the court a heads-up that his arguments could include information that has never been made public because it is under seal.

"What the letter says very clearly is we intend to make reference to the sealed material in open court, so we want to notify the judges that this is my intention to make my arguments," Celli said. "We want the courtroom to be open so long as we can argue the substance of what we want to unseal."

Barbara Petersen, executive director of the First Amendment Foundation, pointed out that since the judges are well aware that sealed documents are at the heart of the appeal, Dershowitz's request comes across more as a "veiled threat."

"It's like 'if you don't keep out the media, then we are going reveal stuff and let the chips fall where they may,' she said. "They don't want it to come out and they don't want to make a motion and ban the media, so they are hoping the judges do it for them."

Attorneys for Giuffre want the case unsealed.

"Ms. Giuffre is a victim of Jeffrey Epstein's sex trafficking organization," her attorney, Paul Cassell, said in a statement attached to the Herald's appeal. "When she bravely came forward to explain what happened to her at the hands of Epstein and his powerful friends, Epstein's 'Madame' and girlfriend, Ghislaine Maxwell, told the world that Ms. Giuffre was a liar. Ms. Giuffre filed a defamation action."

The case was settled in Giuffre's favor, with Maxwell paying Giuffre millions.

Maxwell wants the case to remain sealed and earlier tried to get the judge to destroy the sealed documents, but her motion was denied.

Epstein's deal, brokered by then-Miami U.S. Attorney Alexander Acosta, allowed Epstein to plead guilty to two prostitution charges in state court, and in exchange, Epstein and an untold number of others were given federal immunity. Epstein served just 13 months in the county jail, although much of his incarceration was spent at his office in downtown west Palm Beach on "work release."

Last week, a federal judge ruled that Acosta, now President Donald Trump's secretary of labor, violated the law because he and other prosecutors deliberately kept the deal secret from Epstein's victims, who are now in their late 20s and early 30s.

Cernovich's lawyer, Marc J. Randazza, said he has never seen a court seal nearly an entire court record like this.

"I've seen partial seals, but I've never seen anything where it went quite that far. That in of itself is newsworthy," he said. "What kind of power here is able to influence our court system in such a big way? Something is amiss and I'm glad that journalists are out there looking at it."

PERVERSION

CONTINUED FROM PAGE 13

was taken of the two of them strolling in Manhattan. It was later revealed that Epstein had loaned the prince's ex-wife, Sarah Ferguson, $24,000 to pay off some debts. Ferguson later called the loan a "gigantic error of judgment."

Changing the law

Crime victims' rights advocates have used the Epstein case to strengthen the federal law in recent years, adding more precise language mandating that prosecutors notify victims about plea bargains and allow victims to be heard at sentencing.

Because some statute-of-limitation laws set deadlines for filing civil and criminal sex crime cases, it's difficult to bring them years later, said Marci Hamilton, a University of Pennsylvania professor who is working to ease those restrictions across the country.

But she points out that there has been no statute of limitations for federal sex crimes involving children since 2002.

Children who are sexually abused often take decades to reveal what happened to them, in part because their brains aren't wired at a young age to understand the trauma they've experienced, said Kenneth V. Lanning, a retired FBI agent who investigated and studied child sex crimes for 40 years.

"We want to hold children to some superhuman standard because they behave this way. In reality, police, prosecutors and judges have to understand that children are not all angels from heaven. They are just plain human beings who are emotionally immature so we have to protect them from their own decisions."

"Really if you think about this too hard, it's scary because this is our government that is supposed to protect us but has done everything to protect a pedophile," she said.

From: Darren Indyke [redacted]
Sent: 5/10/2019 11:06:29 PM
To: jeevacation@gmail.com; Martin Weinberg [redacted]
CC: Darren Indyke [redacted]
Subject: Privileged and Confidential - Timeline of the Jeffrey Epstein sex abuse case | Miami Herald
Attachments: AP_17069588640137.jpg; epstein-logo-black.png; Home 05 Epstein EKM (1).jpg; BarryKrischer.pdf.gif; IMG_Editorialpic_4_1_MPAMVONA_L295524803.JPG; Marriott 01 Epstein EKM.jpg; 246ECDE700000578-2897939-image-a-57_1420497542266.jpg; Virgina Roberts 01 Epstein EKM.jpg; Brad Edwards 02 Epstein EKM.jpg; epstein_pt2.jpg; interactive-lead-image.png; AP_17069588640137.jpg

Importance: High

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Timeline of the Jeffrey Epstein sex abuse case | Miami Herald

Nov. 28, 2018

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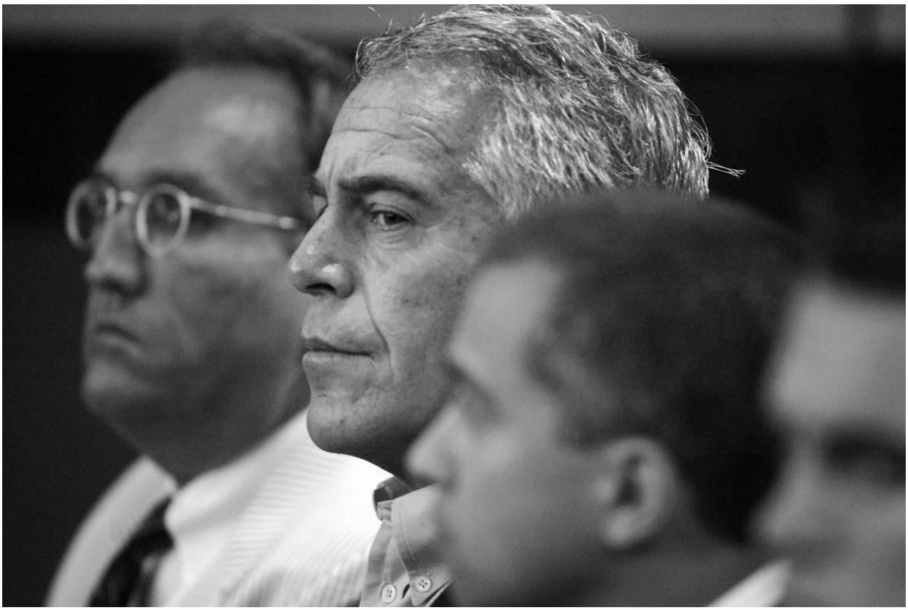


Jeffrey Epstein is flanked by his legal team during a court hearing in the summer of 2008. Uma Sanghvi *Palm Beach Post via AP*

For years, Jeffrey Epstein abused teen girls, police say. A timeline of his case

PERVERSION of JUSTICE

A decade before #MeToo, a multimillionaire sex offender from Florida got the ultimate break.

2005

March: A 14-year-old girl and her parents report that Jeffrey Epstein molested her at a mansion in Palm Beach. She said a female acquaintance and classmate at Royal Palm Beach High School had taken her to the house to give him a massage in exchange for money.

Jeffrey Epstein repeatedly engaged in sexual activity with underage girls at his waterfront Palm Beach home on El Brillo Way, according to police in the Town of Palm Beach. Epstein also owns residences in New York City and the U.S. Virgin Islands, among other locales. Emily Michot *emichot@miamiherald.com*

April: Palm Beach police begin trash pulls at Epstein's home, discovering a telephone message for Epstein with the girl's name on it, and a time that matched the time that she told police she was there. They find the names and phone numbers of other girls on message slips in his trash.

October: With the police probe in full swing, one of Epstein's assistants calls one of the girls just as she is being questioned by police. Investigators begin interviewing more girls, as well as Epstein's butlers, who tell them that Epstein had frequent visits from girls throughout the day. On Oct. 20, they execute a search warrant at his house on El Brillo Way in Palm Beach.

2006

May: Police sign a probable cause affidavit charging Epstein and two of his assistants with multiple counts of unlawful sex acts with a minor. The Palm Beach state attorney, Barry Krischer, instead refers the case to a grand jury.

Town of

Palm Beach police were unhappy with the handling of the Epstein case by then-State Attorney Barry Krischer.

June: The grand jury, after hearing from only one girl, returns an indictment of one count of solicitation of prostitution. The charge does not reflect that the victim in question and others were minors.

July: Epstein's powerhouse legal team tries to negotiate a deal with the State Attorney's Office. Lawyers discuss a deferred prosecution in which Epstein would enter a pretrial intervention program and serve no jail time.

July: After pressure from the Palm Beach police chief, the FBI opens a federal investigation, dubbed "Operation Leap Year." Documents list the possible crime as "child prostitution."

November: The FBI begins interviewing potential witnesses and victims from Florida, New York and New Mexico.

2007

May: As the U.S. Attorney's Office prepares to present the case to a federal grand jury, Epstein's attorneys request a meeting to discuss the investigation.

June: A 53-page indictment is prepared by the U.S. Attorney's Office as, simultaneously, plea negotiations are initiated with Epstein's legal team.

July: Grand jury subpoenas are issued for Epstein's computers, which were apparently removed from his Palm Beach home prior to the police search.

August: The U.S. attorney in Miami, Alexander Acosta, enters into direct discussions about the plea agreement; a motion to compel production of Epstein's computers is delayed.

September: Federal prosecutors draw up several federal plea agreements that are rejected by Epstein and his attorneys. Epstein signs a non-prosecution agreement on Sept. 24, but his attorneys continue to delay his court appearance.

Alexander Acosta has been criticized for his handling of the Jeffrey Epstein case as U.S. attorney. He later became the dean of Florida International University's law school and, later still, President Trump's secretary of labor. *Miami Herald file photo*

October: With the non-prosecution agreement still being debated, Acosta meets with Epstein lawyer Jay Lefkowitz at the West Palm Beach Marriott on Okeechobee Road to discuss finalizing a deal. Among the terms agreed upon: that the victims would not be notified, that the deal would be kept under seal and all grand jury subpoenas would be canceled.

The Marriott hotel in West Palm Beach, at 1001 Okeechobee Blvd., is where U.S. Attorney Alexander Acosta met with Jeffrey Epstein's attorney to work out a plea arrangement. Emily Michot *emichot@miamiherald.com*

November: Epstein's lawyers object to an addendum to the agreement. The provision called for a special master to appoint an attorney to represent Epstein victims' rights to civil compensation.

December: The two sides continue to debate the addendum. Epstein attorney Kenneth Starr asks for a review of the agreement by the U.S. Department of Justice in Washington, further delaying its execution. Victims are told the investigation is continuing.

2008

January: Epstein attorney, Lefkowitz, calls Acosta, telling him his client will not go through with the agreement because it requires him to register as a sex offender.

February: With the plea negotiations and the Justice Department review still in limbo, the FBI continues its probe, locating more witnesses and evidence.

March: Preparations are made for a new federal grand jury presentation. In court documents, the U.S. Attorney's Office notes that Epstein's victims are being harassed by his lawyers, who are not specifically named.

May: The Justice Department issues finding that, if a plea deal is not reached, Epstein can be federally prosecuted.

Palm Beach multimillionaire Jeffrey Epstein is a free man, despite sexually abusing dozens of underage girls according to police and prosecutors. His victims have never had a voice, until now.

June: Epstein's lawyers revisit plea negotiations, and on June 30, Epstein appears in a Palm Beach County courtroom. He pleads guilty to state charges: one count of solicitation of prostitution and one count of solicitation of prostitution with a minor under the age of 18. He is sentenced to 18 months in jail, followed by a year of community control or house arrest. He is adjudicated as a convicted sex offender who must register twice a year in Florida.

July: Epstein's victims learn about his plea in state court after the fact. They file an emergency petition to force federal prosecutors to comply with the federal Crime Victims' Rights Act, which mandates certain rights for crime victims, including the right to be informed about plea agreements and the right to appear at sentencing.

August: Epstein's victims learn that he has already been sent to jail, and that the federal investigation is over. They seek to have his plea agreement unsealed, but federal prosecutors argue against releasing the agreement, commencing a yearlong court battle to learn the terms of Epstein's plea bargain.

October: Epstein begins work release from the county stockade. He is picked up by his private driver six days a week and transported to an office in West Palm Beach, where he accepts visitors for up to 12 hours a day. He returns to the stockade in the evenings to sleep.

Support investigative journalism

The Miami Herald obtained thousands of FBI and court records, lawsuits, and witness depositions, and went to federal court in New York to access sealed documents in the reporting of "Perversion of Justice." The Herald also tracked down more than 60 women who said they were victims, some of whom had never spoken of the abuse before.

Your digital subscription, starting at $0.99 for the first month, supports investigative journalism like this.

2009

July: Epstein is released from the Palm Beach County stockade, five months early. He must register as a sex offender and is on probation for a year, confined to his Palm Beach home except to travel to his office in West Palm Beach. However,

records show he frequently makes trips to Manhattan and to his home in the U.S. Virgin Islands.

August: Palm Beach Police Capt. George Frick finds Epstein walking along A1A in the middle of the afternoon, when he was supposed to be at work in his office in downtown West Palm Beach. Epstein says he is walking to work, even though the location where he is found is not a direct route to his office. His probation officer says Epstein has permission to get some exercise.

September: The federal non-prosecution agreement is made public. By September, at least a dozen civil lawsuits have been filed by women who allege they were molested by Epstein when they were underage. Epstein begins the process of settling them out of court.

Jeffrey Epstein never went to federal prison but his butler/houseman, Alfredo Rodriguez, did, for obstruction of justice. He was busted for hiding Epstein's journal and trying to sell it. He has since died. © *Facebook*

November: One of Epstein's former butlers tries to sell to an undercover FBI agent a black book filled with the names of hundreds of girls and young women that Epstein allegedly procured for sex and massages. The butler tells FBI agents he witnessed nude underage girls at Epstein's pool and had known that the millionaire was having sex with them. He also said he saw pornography involving underage girls on Epstein's computers. The butler/houseman, Alfredo Rodriguez, is later charged

with obstruction of justice and sentenced to federal prison. He dies in 2015. The contents of the black book become public as part of several civil lawsuits.

2010

April: Flight logs obtained as part of civil lawsuits against Epstein show an assortment of politicians, academics, celebrities, heads of state and world leaders flying on Epstein's jets in the early 2000s. Among them: former President Bill Clinton, former national security adviser Sandy Berger, former Colombian President Andrés Pastrana and lawyer Alan Dershowitz.

2011

March: Two of Epstein's victims file a motion in federal court accusing the government of violating their rights by failing to notify them about the plea deal and keeping it secret. Among other things, they want the plea deal invalidated in the hopes of sending Epstein to prison. They accuse federal prosecutors of deceiving them with "false notification letters."

September: U.S. District Judge Kenneth Marra rejects the U.S. Attorney's Office argument that it was under no obligation to notify victims prior to striking a non-prosecution agreement with Epstein because there were no federal charges filed against him. The decision marks a victory for Epstein's victims, but the case will drag on for seven more years.

November: Epstein must register in New York as the highest and most dangerous level of sex offender, despite efforts by him and the New York District Attorney's office to lower the classification. A Level 3 status means "high risk of repeat offense and a threat to public safety exists," according to the state's guidelines.

2012

March-December: Calling himself a "celebrated philanthropist" and a "renowned educational investor," Epstein undertakes a public relations campaign to counter bad press about his sexual exploits. His foundation donates millions to scientific research and sponsors global conferences on ways to achieve world peace and save the planet. He funds cancer and educational research projects around the country.

2015

Virginia Roberts was working at Mar-a-Lago when she was recruited to be a masseuse to Palm Beach hedge fund manager Jeffrey Epstein. She was lured into a life of depravity and sexual abuse.

January: Virginia Roberts files court papers in Florida claiming that she was forced by Epstein to have sex with Prince Andrew and lawyer Alan Dershowitz when she was underage. In a sworn affidavit, she provides photographs of her with the prince and with Epstein's close associate, British socialite Ghislaine Maxwell. She claims Maxwell worked as Epstein's madam, which she denies. Dershowitz and the prince deny her claims as well, setting off a series of legal actions between Dershowitz and Roberts' attorneys that are later resolved in an out-of-court settlement.

April: A federal judge rules that Roberts cannot join the federal Crime Victims' Rights Act lawsuit and that her affidavit — accusing Prince Andrew and Dershowitz of having sex with her when she was underage — be stricken from the case. Dershowitz said the ruling meant he was vindicated. However, the judge does not address the veracity of Roberts' claims, writing: "The factual details regarding with whom and where the Jane Does engaged in sexual activities are immaterial and impertinent to this central claim."

September: Roberts sues Maxwell in federal court in New York, claiming that Epstein's alleged madam defamed her in public statements in the media. The lawsuit is widely viewed as a vessel for Epstein's victims to expose the scope of Epstein's crimes. Several civil lawsuits filed the same year allege that Epstein and Maxwell operated an international sex trafficking operation.

Virginia Roberts holds a photo of herself at 16, her age when she met Jeffrey Epstein. Her life had already been marred by sexual abuse even before she met the multimillionaire. Emily Michot *emichot@miamiherald.com*

2016

June: A lawsuit is filed in Manhattan by a woman who once used the name Katie Johnson, claiming that she was raped by then-presidential candidate Donald Trump at a party at Epstein's Manhattan mansion in 1994 when she was 13 years old. Trump and Epstein both categorically deny it ever happened.

'How in the world, do you, the U.S. attorney, engage in a negotiation with a criminal defendant, basically allowing that criminal defendant to write up the agreement?' said Bradley Edwards, shown here, who is representing some of the victims of serial sex abuser and Palm Beach multimillionaire Jeffrey Epstein. Emily Michot *emichot@miamiherald.com*

November: Johnson backs out of a press conference just days before Election Day, saying she had been threatened and was fearful. She later drops the lawsuit.

2017

February: President Trump nominates former Miami federal prosecutor Acosta as U.S. secretary of labor. Acosta is compelled at his confirmation hearing to briefly address questions about the deal he approved for Epstein. One lawmaker requests more records from the Epstein case. Acosta is confirmed.

June: Roberts settles her lawsuit with Maxwell for an undisclosed sum.

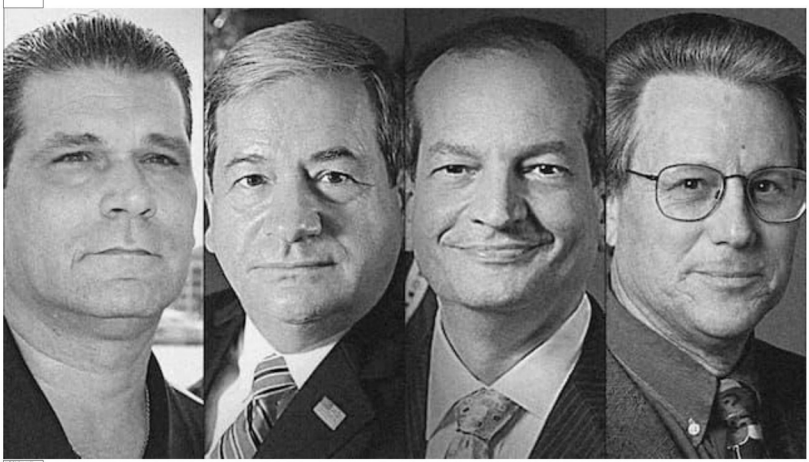
2018

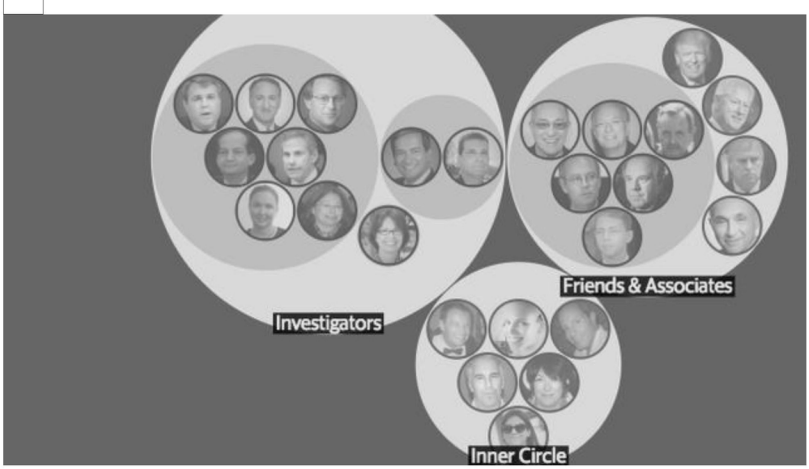
December: Civil trial is scheduled in Palm Beach County Court on Bradley Edwards' allegations that Epstein sued him to punish him for representing several of his victims. The malicious-prosecution lawsuit is set to begin Dec. 4. Epstein has indicated he will not appear in court for trial.

The girls who were abused by Jeffrey Epstein and the cops who championed their cause remain angry over what they regard as a gross injustice, while Epstein's

employees and those who engineered his non-prosecution agreement have prospered.

More from the series





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How Miami Herald journalists investigated Jeffrey Epstein

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****

From: Tonja Haddad Coleman [redacted]
Sent: 10/18/2013 10:38:16 PM
To: Darren Indyke [redacted] Jeffrey Epstein [jeevacation@gmail.com]; haddadfm@aol.com
CC: Debbie Fein [redacted]
Subject: Fwd: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Importance: High

Tonja Haddad Coleman, Esq.
Sent from my iPhone

Begin forwarded message:

From: Sharon Churcher [redacted]
Date: October 18, 2013 at 6:32:28 PM EDT
To: [redacted]
Cc: Nick Pyke [redacted]
Subject: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Dear Sirs:

We are preparing an article about the calendaring today of Mr Edwards' claim against Mr Epstein for jury trial and the witness list which names [redacted] and other young women who allege they were underage victims of Mr Epstein.

Mr Edwards claims that Mr Epstein maliciously attempted to intimidate him and his clients into retracting their claims.

[redacted] further has stated to us that she intends to testify that she was flown to London by Mr Epstein and instructed to have sex at age 17 with Prince Andrew. She alleges that she was paid $15k for this encounter.

She claims that on another occasion, Mr Epstein flew two young women to a dinner for the purpose of entertaining President Clinton. She claims she herself was sex trafficked to several other men, whose contact information is contained in an address book of Mr Epstein's filed in court records.

May we have a comment please? Our deadline is 1pm tomorrow (SATURDAY) ET.

Yours sincerely,
Sharon Churcher

The Mail on Sunday (New York office)

Ph: [redacted]

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Subject: Fwd: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

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Begin forwarded message:

From: Tonja Haddad Coleman <[redacted]>
Date: October 18, 2013 at 6:38:16 PM EDT
To: Darren Indyke <[redacted]>, Jeffrey Epstein <jeevacation@gmail.com>, "[redacted]" <[redacted]>
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From: Sharon Churcher <[redacted]>
Date: October 18, 2013 at 6:32:28 PM EDT
To: "[redacted]" <[redacted]>, "[redacted]" [redacted]
Cc: Nick Pyke <[redacted]>, Liz Hartley <[redacted]>
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Date: October 18, 2013 at 6:38:16 PM EDT
To: Darren Indyke <[redacted]>, Jeffrey Epstein <jeevacation@gmail.com>, "[redacted]" <[redacted]>
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To: Tonja Haddad Coleman [redacted]
CC: Darren Indyke [redacted] Jeffrey Epstein [jeevacation@gmail.com]; Debbie Fein [redacted]
Subject: Re: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Importance: High

Privileged - Redacted

Sent from my iPhone

On Oct 18, 2013, at 6:38 PM, Tonja Haddad Coleman <[redacted]> wrote:

Tonja Haddad Coleman, Esq.
Sent from my iPhone

Begin forwarded message:

From: Sharon Churcher <[redacted]>
Date: October 18, 2013 at 6:32:28 PM EDT
To: [redacted] <[redacted], "[redacted]"
[redacted]
Cc: Nick Pyke <[redacted]>, Liz Hartley <[redacted]>
Subject: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Dear Sirs:

We are preparing an article about the calendaring today of Mr Edwards' claim against Mr Epstein for jury trial and the witness list which names [redacted] and other young women who allege they were underage victims of Mr Epstein.

Mr Edwards claims that Mr Epstein maliciously attempted to intimidate him and his clients into retracting their claims.

Ms [redacted] further has stated to us that she intends to testify that she was flown to London by Mr Epstein and instructed to have sex at age 17 with Prince Andrew. She alleges that she was paid $15k for this encounter.

She claims that on another occasion, Mr Epstein flew two young women to a dinner for the purpose of entertaining President Clinton. She claims she herself was sex trafficked to several other men, whose contact information is contained in an address book of Mr Epstein's filed in court records.

May we have a comment please? Our deadline is 1pm tomorrow (SATURDAY) ET.

Yours sincerely,
Sharon Churcher

The Mail on Sunday (New York office)

Ph: [redacted] or [redacted]

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From: Darren Indyke [redacted]
Sent: 10/19/2013 12:27:41 AM
To: Fred Haddad [redacted]
CC: Tonja Haddad Coleman [redacted]; Jeffrey Epstein [jeevacation@gmail.com]; Debbie Fein [redacted]
Subject: Re: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Importance: High

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Sent from my iPhone

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Privileged - Redacted

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From: Fred Haddad [redacted]
Sent: 10/19/2013 1:36:44 AM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Importance: High

Privileged - Redacted

Sent from my iPad

On Oct 18, 2013, at 8:30 PM, Jeffrey Epstein <jeevacation@gmail.com> wrote:

Privileged - Redacted

On Fri, Oct 18, 2013 at 8:10 PM, Fred Haddad <[redacted]> wrote:

Privileged - Redacted

Sent from my iPhone

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<[redacted]>
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Date: Friday, March 4 2011 04:28 PM
Subject: FW: Ghislaine Maxwell
From: GMAX <gmax1@ellmax.com>
To: J Jep <jeevacation@gmail.com>;

------ Forwarded Message
From: Mark Cohen [redacted]
Date: Fri, 4 Mar 2011 11:14:35 -0500
To: NY Max <gmax1@ellmax.com>
Subject: FW: Ghislaine Maxwell

FYI, following up on my email of this morning. Again, I have no intention of responding unless you direct otherwise.

From: [redacted]
Sent: Friday, March 04, 2011 11:12 AM
To: Brett D. Jaffe
Subject: Ghislaine Maxwell

Dear Brett Jaffe,

I left you a telephone message earlier. The Mail on Sunday newspaper is running a story on Ghislaine Maxwell, Jeffrey Epstein, Prince Andrew and others this weekend.

We urgently require responses from Ms Maxwell to the following questions. Our deadline is noon tomorrow. My telephone numbers are [redacted] or [redacted]

Annette Witheridge
On behalf of the Mail on Sunday

1. [redacted] says Ghislaine Maxwell offered her a job as a masseuse with Jeffrey Epstein when she was aged 15. Ms Maxwell led [redacted] upstairs on her first visit to him at his Palm Beach house. Mr Epstein was naked on massage table.
Ms Maxwell initiated a bisexual encounter during which Ms Maxwell rubbed her own breasts on Mr Epstein and directed [redacted] to copy her.
Please respond to these allegations and all others in the original Jane Doe 102 complaint.

2. Ms Maxwell took part in numerous other sexual encounters involving her assistant [redacted] and Mr Epstein.

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Ms Maxwell and Mr Epstein subsequently travelled with [redacted] to Little St James where she was directed to stage an orgy for Andrew and Mr Epstein during which she performed oral sex on them.

7. [redacted] was paid extra by Mr Epstein or his employees for these sexual encounters.

8. Ms Maxwell knew [redacted] age and laughed about it when she introduced her to Andrew.

9. Ms Maxwell and Mr Epstein tried to persuade [redacted] to bear his child.

10. After sexual encounters with male friends of Mr Epstein and/or Ms Maxwell, Ms Maxwell and Mr Epstein would ask [redacted] explicit questions about what went on.

11. Mr Epstein's residences in Florida and New York had surveillance cameras that taped the sex sessions and taped [redacted] even in the bathroom.

12. Ms Maxwell and Mr Epstein arranged for Ehud Barak to have sex with several girls, often at Mr Epstein's Palm Beach house.

13. Ms Maxwell piloted President Bill Clinton in a helicopter to a dinner on Little St James where two brunettes Ms Maxwell, [redacted] and Mr Epstein were at the table.

14. Mr Epstein bought Ms Maxwell the helicopter, homes in New York and London and a Mercedes.

------ End of Forwarded Message

Date: Friday, March 4 2011 04:40 PM
Subject: Re: Fwd: FW: Ghislaine Maxwell
From: The Duke <[redacted]>
To: Jeevacation@gmail.com;

What? I don't know any of this. How are you responding?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: The Duke
Sent: Fri Mar 04 16:31:26 2011
Subject: Fwd: FW: Ghislaine Maxwell

---------- Forwarded message ----------
From: **GMAX** <gmax1@ellmax.com>
Date: Fri, Mar 4, 2011 at 8:28 AM
Subject: FW: Ghislaine Maxwell
To: J Jep <jeevacation@gmail.com>

------ Forwarded Message
From: Mark Cohen <[redacted]>
Date: Fri, 4 Mar 2011 11:14:35 -0500
To: NY Max <gmax1@ellmax.com>
Subject: FW: Ghislaine Maxwell

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From: Awitheridg@aol.com [mailto:Awitheridg@aol.com]
Sent: Friday, March 04, 2011 11:12 AM
To: Brett D. Jaffe
Subject: Ghislaine Maxwell

Dear Brett Jaffe,

I left you a telephone message earlier. The Mail on Sunday newspaper is running a story on Ghislaine Maxwell, Jeffrey Epstein, Prince Andrew and others this weekend.

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Please respond to these allegations and all others in the original Jane Doe 102 complaint.

2. Ms Maxwell took part in numerous other sexual encounters involving her assistant [redacted] and Mr Epstein.

3. Ms Maxwell kept sex toys and costumes in the Palm Beach mansion and dressed [redacted] prior to sex sessions with Mr Epstein. S Maxwell herself wore black vinyl during sex sessions with Mr Epstein.

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Ms Maxwell and Mr Epstein subsequently travelled with [redacted] to Little St James where she was directed to stage an orgy for Andrew and Mr Epstein during which she performed oral sex on them.

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11. Mr Epstein's residences in Florida and New York had surveillance cameras that taped the sex sessions and taped [redacted] even in the bathroom.

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------ End of Forwarded Message

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Date: Friday, March 4 2011 04:48 PM
Subject: Re: Fwd: FW: Ghislaine Maxwell
From: The Duke [redacted]
To: Jeevacation@gmail.com;

Please make sure that every statement or legal letter states clearly that I am NOT involved and that I knew and know NOTHING about any of these allegations.
I can't take any more of this my end.

From: Jeffrey Epstein <jeevacation@gmail.com>
To: The Duke
Sent: Fri Mar 04 16:45:53 2011
Subject: Re: Fwd: FW: Ghislaine Maxwell

just got it two minutes ago.. I ve asked g lawyers to send a letter. Not sure,, it is so salcisous and ridiculous, im not sure how to respond,, the only person she didn't have sex with was Elvis

On Fri, Mar 4, 2011 at 8:40 AM, The Duke [redacted] wrote:

What? I don't know any of this. How are you responding?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: The Duke
Sent: Fri Mar 04 16:31:26 2011
Subject: Fwd: FW: Ghislaine Maxwell

---------- Forwarded message ---------
From: **GMAX** <gmax1@ellmax.com>
Date: Fri, Mar 4, 2011 at 8:28 AM
Subject: FW: Ghislaine Maxwell
To: J Jep <jeevacation@gmail.com>

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Date: Friday, March 4 2011 04:56 PM
Subject: Fw: Fwd: FW: Ghislaine Maxwell
From: Gmax <gmax1@ellmax.com>
To: jeevacation@gmail.com;

---- Original Message ----
From: The Duke [redacted]
To: Gmax
Sent: Fri Mar 04 11:46:49 2011
Subject: Fw: Fwd: FW: Ghislaine Maxwell

Hey there! What's all this? I don't know anything about this! You must SAY so please. This has NOTHING to do with me.
I can't take any more of this.

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To: The Duke
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Subject: Fwd: FW: Ghislaine Maxwell

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Date: Friday, March 4 2011 05:20 PM
Subject: Re: Fwd: FW: Ghislaine Maxwell
From: Alan Dershowitz [redacted]
To: Jeffrey Epstein [redacted]

Privileged - Redacted

Sent from my Verizon Wireless BlackBerry

From: Jeffrey Epstein <jeevacation@gmail.com>
Date: Fri, 4 Mar 2011 08:37:01 -0800
To: Alan M. Dershowitz [redacted]
Subject: Fwd: FW: Ghislaine Maxwell

Privileged - Redacted

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From: **GMAX** <gmax1@ellmax.com>
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From: J [jeevacation@gmail.com]
Sent: 2/1/2019 10:18:49 AM
To: Michael Wolff[redacted]
Subject: Fwd:

have fun

---------- Forwarded message ---------
From: **J** <jeevacation@gmail.com>
Date: Fri, Feb 1, 2019 at 5:18 AM
Subject:
To: jeffrey epstein <jeevacation@gmail.com>

prostittion is a state crime. never before a man in his own house charged with soliciting. ! in Florida first offenders are required to take a sex ed class and get pre trial diversion. no criminal record. . . there is a felony solication for the THIRD offense. . A grand jury was held and they found me guilty of one count of felony solitciation . because there were many girls. . mandatory diversion. sentence. . !!!!. a grand jury . ususally only for capital murder cases. . Recarey and Reiter (police chief). pulled my garbage for months, and surveilled the house . letting all the gilrs come and go ? ! called in the FBI. they did not like the grand jury result. and released to the press, the raw sewage of police interviews , ie, no girl was cross examined EVER. . Unheard of. . - the girls retunred the house multiplie times. for 200 dollars for a rub and tug. . no sex. . some worked in the locak massage parlors. most in thier mid twenties. . There is only press stories told my strippers of me buying my girlfiedn from slovakia from her parents . girls under 15. . all made up to get press. . FBI / puts a task force together title " operation leap year " to investigate my personal massage activity ?! nuts. interviews my chiropractor ? medical info. . etc.

[redacted] worked at Mara Lago. Trump knew of it. and came to my house many times during that period. The testimony of the houseman John allessi confiremed it. He never got a massage.
abe gosman a friend of mine . ran into financial difficulty with assited living homes. . His home was listed at 45 million dollars. with no takers for months on end . He and I agreed a price of 30m. (His wife [redacted] . ends up going to jail for lying to the bankrupty trustee about her jewelry.) this is in the summer of 04. . I became the stalking horse bidder at 36 m. ie if someone bid higher I would receive a fee.
trump buys the house at the telephone auction . only me trump andd his friend pulty the developer.
He quickly puts it on the market for 125 million. serves the purpose of a justification for a high sale later . . and no one will touch it . it is is bough in the name of trump properties llc. . no idea who owns it. or what else it " owns ".
Three years later 08 he sells it to Ryboloolev for approx 100 million. He should have had a 50 million plus capital gain . he tells people and press he spent 20-30 m to fix up. that would justifiy a reduction in captial gains. key question how did he report the sale , if he did at all on his 08 tax return.
He has no money. when he buys the house. His biz model is putting his name on a real estate development and gets a fee for using his name. The hotel biz is just that. someone else buys the hotel. hoping to make a profit from its operation and eventual sale. Trump put his name on it , and get a 2 % fee and maybe a piece of the profit if any on sale. He touts the project as " his " ... . just as in his current financial statements on file as president he lists his " income " as the GROSS receipts of the clubs. with no expenses deducted. not his personal revenue. ie the doral golf club loses money every year. it pays out more than it takes in , but he lists the revenue as his income. AMAZING.

"Trump's relationship with Deutsche Bank has not always been amicable; in November 2008, he had difficulty making payments on a $640 million Deutsch Bank loan – $40 million of which he guaranteed personally – he took out to finance the construction of the Trump tower in Chicago."
https://themoscowproject.org/collusion/trump-sues-deutsche-bank-3-billion/

in july , miraculously , rybololev ve buys the house for roughly the same " 40 plus million dollar " profit "

https://www.washingtonpost.com/news/worldviews/wp/2017/08/24/the-russian-diplomat-found-dead-in-his-pool-in-sudan-is-the-seventh-to-die-since-november/?utm_term=.77b0a287fb11
Joe Recarey dies in june of 18. same m.o. ?

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The Virgin Islands

DAILY NEWS

SERVING THE VIRGIN ISLANDS SINCE 1930

A Pulitzer Prize-Winning Newspaper

ST. CROIX ST. JOHN ST. THOMAS TORTOLA

CELEBRATING THE PEOPLE, CULTURES AND HISTORY OF THE VIRGIN ISLANDS

Cops increase traffic enforcement efforts

Daily News photo by BRIAN O'CONNOR

V.I. police Sgt. Latoya Schneider directs a Jeep to the side of the road for ticketing Tuesday along Veterans Drive on St. Thomas. Police have increased enforcement of a range of traffic issues in the territory in recent weeks. Page 4

Housing officials told to expedite payments for hurricane repairs

Page 3

Gov. Bryan testifies before U.S. Senate

Page 2

Pardoned broadcaster fighting order to pay restitution

Page 2

Perversion of justice

Before joining Trump's Cabinet, Alexander Acosta helped Jeffrey Epstein avoid spending the rest of his life in prison

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EDA officials refuse to release information

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St. Croix Dolphins take home gold

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How a future Trump Cabinet member gave a serial sex abuser the deal of a lifetime

By JULIE K. BROWN
Miami Herald

MIAMI — On a muggy October morning in 2007, Miami's top federal prosecutor, Alexander Acosta, had a breakfast appointment with a former colleague, Washington, D.C., attorney Jay Lefkowitz.

It was an unusual meeting for the then-38-year-old prosecutor, a rising Republican star who had served in several White House posts before being named U.S. attorney in Miami by President George W. Bush.

Instead of meeting at the prosecutor's Miami headquarters, the two men — both with professional roots in the prestigious Washington law firm of Kirkland & Ellis — convened at the Marriott in West Palm Beach, about 70 miles away. For Lefkowitz, 44, a U.S. special envoy to North Korea and corporate lawyer, the meeting was critical.

His client, Palm Beach multimillionaire Jeffrey Epstein, 54, was accused of assembling a large, cultlike network of underage girls — with the help of young female recruiters — to coerce into having sex acts behind the walls of his opulent waterfront mansion as often as three times a day, the Town of Palm Beach police found.

The eccentric hedge fund manager, whose friends included former President Bill Clinton, Donald Trump and Prince Andrew, was also suspected of trafficking minor girls, often from overseas, for sex parties at his other homes in Manhattan, New Mexico and the Virgin Islands, FBI and court records show.

Facing a 53-page federal indictment, Epstein could have ended up in federal prison for the rest of his life.

But on the morning of the breakfast meeting, a deal was struck — an extraordinary plea agreement that would conceal the full extent of Epstein's crimes and the number of people involved.

Not only would Epstein serve just 13 months in the county jail, but the deal — called a non-prosecution agreement — essentially shut down an ongoing FBI probe into whether there were more victims and other powerful people who took part in Epstein's sex crimes, according to a Miami Herald examination of thousands of emails, court documents and FBI records.

The pact required Epstein to plead guilty to two prostitution charges in state court.

Epstein and four of his accomplices named in the agreement received immunity from all federal criminal charges. But even more unusual, the deal included wording that granted immunity to "any potential co-conspirators" who were also involved in Epstein's crimes.

These accomplices or participants were not identified in the agreement, leaving it open to interpretation whether it possibly referred to other influential people who were having sex with underage girls at Epstein's various homes or on his plane.

As part of the arrangement, Acosta agreed, despite a federal law to the contrary, that the deal would be kept from the victims. As a result, the non-prosecution agreement was sealed until after it was approved by the judge, thereby averting any chance that the girls — or anyone else — might show up in court and try to derail it.

File photo by ABACA PRESS

U.S. Secretary of Labor Alexander Acosta, when he was a federal prosecutor in Miami, helped negotiate an agreement that greatly reduced the severity of the conviction of Jeffrey Epstein, a sexual abuser of girls.

> **Jeffrey preyed on girls who were in a bad way, girls who were basically homeless. He went after girls who he thought no one would listen to and he was right.**
>
> — Courtney Wild, who was 14 when she met Epstein

This is the story of how Epstein, bolstered by unlimited funds and represented by a powerhouse legal team, was able to manipulate the criminal justice system, and how his accusers, still traumatized by their pasts, believe they were betrayed by the very prosecutors who pledged to protect them.

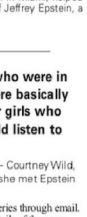
"I don't think anyone has been told the truth about what Jeffrey Epstein did," said one of Epstein's victims, Michelle Licata, now 30. "He ruined my life and a lot of girls' lives. People need to know what he did and why he wasn't prosecuted so it never happens again."

Now President Donald Trump's secretary of labor, Acosta, 49, oversees a massive federal agency that provides oversight of the country's labor laws, including human trafficking.

Acosta did not respond to numerous requests for an interview or answer queries through email.

But court records reveal details of the negotiations and the role that Acosta would play in arranging the deal, which scuttled the federal probe into a possible international sex trafficking operation. Among other things, Acosta allowed Epstein's lawyers unusual freedoms in dictating the terms of the non-prosecution agreement.

"The damage that happened in this case is unconscionable," said Bradley Edwards, a former state prosecutor who represents some of Epstein's victims. "How in the world, do you, the U.S. attorney, engage in a negotiation with a criminal defendant, basically allowing that criminal defendant to write up the agreement?"



Bradley Edwards

As a result, neither the victims — nor even the judge — would know how many girls Epstein allegedly sexually abused between 2001 and 2005, when his underage sex activities were first uncovered by police. Police referred the case to the FBI a year later, when they began to suspect that their investigation was being undermined by the Palm Beach State Attorney's Office.

Not 'he said, she said'

"This was not a 'he said, she said' situation. This was 50-something 'shes' and one 'he' — and the 'shes' all basically told the same story," said retired Palm Beach Police Chief Michael Reiter, who supervised the police probe.

Michael Reiter

More than a decade later, at a time when Olympic gymnasts and Hollywood actresses have become a catalyst for a cultural reckoning about sexual abuse, Epstein's victims have all but been forgotten.

The women — now in their late 20s and early 30s — are still fighting for an elusive justice that even the passage of time has not made right.

Like other victims of sexual abuse, they believe they've been silenced by a criminal justice system that stubbornly fails to hold Epstein and other wealthy and powerful men accountable.

"Jeffrey preyed on girls who were in a bad way, girls who were basically homeless. He went after girls who he thought no one would listen to and he was right," said Courtney Wild, who was 14 when she met Epstein.

Over the past year, the Miami Herald examined a decade's worth of court documents, lawsuits, witness depositions and newly released FBI documents. Key people involved in the investigation — most of whom have never spoken before — were also interviewed. The Herald also obtained new records, including the full unredacted copy of the Palm Beach police investigation and witness statements that had been kept under seal.

The Herald learned that, as part of the plea deal, Epstein provided what the government called "valuable consideration" for unspecified information he supplied to federal investigators. While the documents obtained by the Herald don't detail what the information was, Epstein's sex crime case happened just as the country's subprime mortgage market collapsed, ushering in the 2008 global financial crisis.

Records show that Epstein was a key federal witness in the criminal prosecution of two prominent executives with Bear Stearns, the global investment brokerage that failed in 2008, who were accused of corporate securities fraud. Epstein was one of the largest investors in the hedge fund managed by the executives, who were later acquitted. It is not known what role, if any, the case played in Epstein's plea negotiations.

The Herald also identified about 80 women who say they were molested or otherwise sexually abused by Epstein from 2001 to 2006. About

See PERVERSION, page 16

For years, Jeffrey Epstein abused teen girls, police say. A timeline of his case

2005

March: A 14-year-old girl and her parents report that Jeffrey Epstein molested her at a mansion in Palm Beach, Fla. She said a female accomplice and classmate at Royal Palm Beach High School had taken her to the house to give him a massage in exchange for money.

April: Palm Beach police begin track pulls at Epstein's home, discovering a telephone message for Epstein with the girl's name on it, and a time that matched the time that she told police she was there. They find the names and phone numbers of other girls on message slips in his trash.

October: With the police probe in full swing, one of Epstein's assistants calls one of the girls just as she is being questioned by police. Investigators begin interviewing more girls, as well as Epstein's butlers, who tell them that Epstein had frequent visits from girls. On Oct. 20, they execute a search warrant at his Palm Beach house.

2006

May: Police sign a probable cause affidavit charging Epstein and two of his assistants with multiple counts of unlawful sex acts with a minor. The Palm Beach state attorney, Barry Krischer, instead refers the case to a grand jury.

June: The grand jury, after hearing from only one girl, returns an indictment of one count of solicitation of prostitution. The charge does not reflect that the victim was a minor.

July: Epstein's powerhouse legal team tries to negotiate a deal with the State Attorney's Office. Lawyers discuss a deferred prosecution in which Epstein would enter a pretrial intervention program and serve no jail time.

July: After pressure from the Palm Beach police chief, the FBI opens a federal investigation, dubbed "Operation Lean Year." Documents list the possible crime as "child prostitution."

November: The FBI begins interviewing potential witnesses and victims from Florida, New York and New Mexico.

2007

May: As the U.S. Attorney's Office prepares to present the case to a federal grand jury, Epstein's attorneys request a meeting to discuss the investigation.

June: A 53-page indictment is prepared by the U.S. Attorney's Office as, simultaneously, plea negotiations are initiated with Epstein's legal team.

July: Grand jury subpoenas are issued for Epstein's computers, which were removed from his home prior to the police search.

August: The U.S. attorney in Miami, Alexander Acosta, enters into direct discussions about the plea agreement, a motion to compel production of Epstein's computers is delayed.

September: Federal prosecutors draw up several federal plea agreements that are rejected by Epstein and his attorneys. Epstein signs a non-prosecution agreement on Sept. 24, but his attorneys continue to delay his court appearance.

October: With the non-prosecution agreement still being debated, Acosta meets with Epstein lawyer Jay Lefkowitz at the West Palm Beach Marriott to discuss finalizing a deal. Among the terms agreed upon: that the victims would not be notified, that the deal would be kept under seal and all grand jury subpoenas would be canceled.

November: Epstein's lawyers object to an addendum to the agreement. The provision called for a special master to appoint an attorney to represent Epstein victims' rights to civil compensation.

December: The two sides continue to debate the addendum. Epstein attorney Kenneth Starr asks for a review of the agreement by the U.S. Department of Justice in Washington, further delaying its execution. Victims are told the investigation is continuing.

2008

January: Epstein attorney Lefkowitz calls Acosta, telling him his client will not go through with the agreement because it requires him to register as a sex offender.

February: With the plea negotiations and the Justice Department review still in limbo, the FBI continues its probe.

March: Preparations are made for a new federal grand jury presentation. In court documents, the U.S. Attorney's Office notes that Epstein's victims are being harassed by his lawyers.

May: The Justice Department issues finding that, if a plea deal is not reached, Epstein can be federally prosecuted.

June: Epstein's lawyers revisit plea negotiations, and on June 30, Epstein appears in a Palm Beach County courtroom. He pleads guilty to state charges: one count of solicitation of prostitution and one count of solicitation of prostitution with a minor under the age of 18. He is sentenced to 18 months in jail, followed by a year of community control or house arrest. He is adjudicated as a convicted sex offender who must register twice a year in Florida.

July: Epstein's victims learn about his plea in state court after the fact. They file an emergency petition to force federal prosecutors to comply with the federal Crime Victims' Rights Act, which mandates certain rights for crime victims, including the right to be informed about plea agreements and the right to appear at sentencing.

August: Epstein's victims learn that he has already been sent to jail, and that the federal investigation is over. They seek to have his plea agreement unsealed, but federal prosecutors argue against releasing the agreement, commencing a yearlong court battle to learn the terms of Epstein's plea bargain.

October: Epstein begins work release. He is picked up by his private driver six days a week and transported to an office in West Palm Beach, where he accepts visitors for up to 12 hours a day. He returns to jail in the evenings to sleep.

2009

July: Epstein is released from the Palm Beach County stockade, five months early. He must register as a sex offender and is on probation for a year. Confined to his Palm Beach home except to travel to his office in West Palm Beach. However, reports show he frequently makes trips to Manhattan and to his home off St. Thomas.

August: Palm Beach Police Capt. George Pick finds Epstein walking along A1A in the middle of the afternoon, when he was supposed to be at work in his office in downtown West Palm Beach. Epstein says he is walking to work, even though the location where he is found is not a direct route to his office. His probation officer says Epstein has permission to get some exercise.

September: The federal non-prosecution agreement is made public. By September, at least a dozen civil lawsuits have been filed by women who allege they were molested by Epstein when they were underage. Epstein begins the process of settling them.

November: One of Epstein's former butlers tries to sell to an undercover FBI agent a black book filled with the names of hundreds of girls and young women that Epstein allegedly procured for sex and massages. The butler tells FBI agents he witnessed nude underage girls at Epstein's pool and had known that the millionaire was having sex with them. He also said he saw pornography involving underage girls on Epstein's computers. The butler/housemain, Alfredo Rodriguez, is later charged with obstruction of justice and sentenced to federal prison. He dies in 2015. The contents of the black book become public as part of several civil lawsuits.

2010

April: Flight logs obtained as part of civil lawsuits against Epstein show an assortment of politicians, academics, celebrities, heads of state and world leaders flying on Epstein's jets in the early 2000s. Among them: former President Bill Clinton, former national security adviser Sandy Berger, former Colombian President Andres Pastrana and lawyer Alan Dershowitz.

2011

March: Two of Epstein's victims file a motion in federal court accusing the government of violating their rights by failing to notify them about the plea deal and keeping it secret. Among other things, they want the plea deal invalidated in the hopes of sending Epstein to prison.

September: U.S. District Judge Kenneth Marra rejects the U.S. Attorney's Office argument that it was under no obligation to notify victims prior to striking a non-prosecution agreement with Epstein because there were no federal charges filed against him. The decision marks a victory for Epstein's victims, but the case will drag on for seven more years.

November: Epstein must register in New York as the highest and most dangerous level of sex offender, despite efforts by him and the New York District Attorney's office to lower the classification. A Level 3 status means "high risk of repeat offense and a threat to public safety exists," according to the state's guidelines.

2012

March-December: Calling himself a "celebrated philanthropist" and a "renowned educational investor," Epstein undertakes a public relations campaign to counter bad press about his sexual exploits. His foundation donates millions to scientific research and sponsors global conferences on ways to achieve world peace and save the planet. He funds cancer and educational research projects around the country.

2015

January: Virginia Roberts files court papers in Florida claiming that she was forced by Epstein to have sex with Prince Andrew and lawyer Alan Dershowitz when she was underage, in a sworn affidavit, she provides photographs of her with the prince and with Epstein's close associate, British socialite Ghislaine Maxwell. She claims Maxwell recruited Epstein's victims, which she denies. Dershowitz and the prince deny her claims as well.

April: A federal judge rules that Roberts cannot join the federal Crime Victims' Rights Act lawsuit and that her affidavit — accusing Prince Andrew and Dershowitz of having sex with her when she was underage — be stricken from the case. Dershowitz said the ruling meant he was vindicated. However, the judge does not address the veracity of Roberts' claims, writing: "The factual details regarding with whom and where the Jane Does engaged in sexual activities are immaterial and impertinent to this central claim."

September: Roberts sues Maxwell in federal court in New York, claiming that Epstein's alleged madam defamed her in public statements in the media. The lawsuit is widely viewed as a vessel for Epstein's victims to expose the scope of Epstein's crimes. Several civil lawsuits filed the same year allege that Epstein and Maxwell operated a sex trafficking operation.

2016

June: A lawsuit is filed in Manhattan by a woman who once used the name Katie Johnson, claiming that she was raped by then-presidential candidate Donald Trump at a party at Epstein's Manhattan mansion in 1994 when she was 13 years old. Trump and Epstein both categorically deny it happened.

November: Johnson backs out of a press conference just days before Election Day, saying she had been threatened and was fearful. She later drops the lawsuit.

2017

February: President Donald Trump nominates former Miami federal prosecutor Acosta as U.S. secretary of labor.

June: Roberts settles her lawsuit with Maxwell for an undisclosed sum.

2018

December: Civil trial is scheduled in Palm Beach County Court on Brittney Edwards' allegations that Epstein sued him to punish him for representing several of his victims. The malicious-prosecution lawsuit is set to begin Dec. 4. Epstein has indicated he will not appear in court for trial.

— *Miami Herald*

HOUSE_OVERSIGHT_023048

PERVERSION

CONTINUED FROM PAGE 14

60 of them are now scattered around the country and abroad. Eight of them agreed to be interviewed, on or off the record. Four of them were willing to speak on video.

The women are now mothers, wives, nurses, bartenders, Realtors, hairdressers and teachers. One is a Hollywood actress. Several have grappled with trauma, depression and addiction. Some have served time in prison.

A few did not survive. One young woman was found dead last year in a rundown motel in West Palm Beach. She overdosed on heroin and left behind a young son.

As part of Epstein's agreement, he was required to register as a sex offender, and pay restitution to the three dozen victims identified by the FBI. In many cases, the confidential financial settlements came only after Epstein's attorneys exposed every dark corner of their lives in a scorched-earth effort to portray the girls as gold diggers.

"You beat yourself up mentally and physically," said Jena-Lisa Jones, 30, who said Epstein molested her when she was 14. "You can't ever stop your thoughts. A word can trigger something. For me, it is the word 'pure' because he called me 'pure' in that room and then I remember what he did to me in that room."

Now, more than a decade later, two unrelated civil lawsuits arose.

A civil trial set for Dec. 4 in Palm Beach County state court, involves Epstein and Edwards, whom Epstein had accused of legal misdeeds in representing several victims.

The case would have been noteworthy because it would mark the first time that Epstein's victims would have their day in court, and several of them were scheduled to testify.

However, Epstein settled that case and publicly apologized to Edwards — but he did not apologize to any of his victims.

A second lawsuit, known as the federal Crime Victims' Rights suit, is still pending in South Florida after a decade of legal jousting. It seeks to invalidate the non-prosecution agreement in hopes of sending Epstein to federal prison.

Wild, who has never spoken publicly until now, is Jane Doe No. 1 in "Jane Doe No. 1 and Jane Doe No. 2 vs. the United States of America," a federal lawsuit that alleges Epstein's federal non-prosecution agreement was illegal.

Federal prosecutors, including Acosta, not only broke the law, the women contend in court documents, but they conspired with Epstein and his lawyers to circumvent public scrutiny and deceive his victims in violation of the Crime Victims' Rights Act.

The law assigns victims a series of rights, including the right of notice of any court proceedings and the opportunity to appear at sentencing.

"As soon as that deal was signed, they silenced my voice and the voices of all of Jeffrey Epstein's other victims," said Wild, now 31. "This case is about justice, not just for us, but for other victims who aren't Olympic stars or Hollywood stars."

In court papers, federal prosecutors have argued that they did not violate the Crime Victims' Rights Act because no federal charges were ever filed in the U.S. District Court for the Southern District of Florida, an argument that was later dismissed by the judge.

Despite substantial physical evidence and multiple witnesses backing up the girls' stories, the secret deal allowed Epstein to enter guilty pleas to two felony prostitution charges. Epstein admitted to committing only one offense against one underage girl, who was labeled a prostitute, even though she was 14, which is well under the age of consent — 18 in Florida.

File photo by ASSOCIATED PRESS

Jeffrey Epstein, second from left, in custody in West Palm Beach, Fla., in 2008.

> **You beat yourself up mentally and physically. You can't ever stop your thoughts. A word can trigger something. For me, it is the word 'pure' because he called me 'pure' in that room and then I remember what he did to me in that room.**
>
> — Jena-Lisa Jones, who said Epstein molested her when she was 14

"She was taken advantage of twice — first by Epstein, and then by the criminal justice system that labeled a 14-year-old girl as a prostitute," said Spencer Kuvin, the lawyer who represented the girl.

"It's just outrageous how they minimized his crimes and devalued his victims by calling them prostitutes," said Yasmin Vafa, a human rights attorney and executive director of Rights4Girls, which is working to end the sexual exploitation of girls and young women.

"There is no such thing as a child prostitute. Under federal law, it's called child sex trafficking — whether Epstein pimped them out to others or not. It's still a commercial sex act — and he could have been jailed for the rest of his life under federal law," she said.

It would be easy to dismiss the Epstein case as another example of how there are two systems of justice in America, one for the rich and one for the poor. But a thorough analysis of the case tells a far more troubling story.

Unusual level of collaboration

A close look at the trove of letters and emails contained in court records provides a window into the plea negotiations, revealing an unusual level of collaboration between federal prosecutors and Epstein's legal team that even government lawyers, in recent court documents, admitted was unorthodox.

Acosta, in 2011, would explain that he was unduly pressured by Epstein's heavy-hitting lawyers — Lefkowitz, Harvard professor Alan Dershowitz, Jack Goldberger, Roy Black, former U.S. Attorney Guy Lewis, Gerald Lefcourt, and Kenneth Starr, the former Whitewater special prosecutor who investigated Bill Clinton's sexual liaisons with Monica Lewinsky.

That included keeping the deal from Epstein's victims, emails show.

"Thank you for the commitment you made to me during our Oct. 12 meeting," Lefkowitz wrote in a letter to Acosta after their breakfast meeting in West Palm Beach. He added that he was hopeful that Acosta would abide by a promise to keep the deal confidential.

"You … assured me that your office would not … contact any of the identified individuals, potential witnesses or potential civil claimants and the respective counsel in this matter," Lefkowitz wrote.

In email after email, Acosta and the lead federal prosecutor, A. Marie Villafana, acquiesced to Epstein's legal team's demands, which often focused on ways to limit the scandal by shutting out his victims and the media, including suggesting that the charges be filed in Miami, instead of Palm Beach, where Epstein's victims lived.

"On an 'avoid the press' note … I can file the charge in district court in Miami which will hopefully cut the press coverage significantly. Do you want to check that out?" Villafana wrote to Lefkowitz in a September 2007 email.

Federal prosecutors identified 36 underage victims, but none of those victims appeared at his sentencing on June 30, 2008, in state court in Palm Beach County.

Most of them heard about it on the news — and even then they didn't understand what had happened to the federal probe that they'd been assured was ongoing.

Edwards filed an emergency motion in federal court to block the non-prosecution agreement, but by the time the agreement was unsealed — over a year later — Epstein had already served his sentence and been released from jail.

"The conspiracy between the government and Epstein was really 'let's figure out a way to make the whole thing go away as quietly as possible,'" said Edwards, who represents Wild and Jane Doe No. 2, who declined to comment for this story. "In never consulting with the victims, and keeping it secret, it showed that someone with money can buy his way out of anything."

VIP treatment

It was far from the last time Epstein would receive VIP handling.

Unlike other convicted sex offenders, Epstein didn't face the kind of rough justice that child sex offenders do in Florida state prisons. Instead of being sent to state prison, Epstein was housed in a private wing of the Palm Beach County jail.

Rather than having him sit in a cell most of the day, the Palm Beach County Sheriff's Office allowed Epstein work release privileges, which enabled him to leave the jail six days a week, for 12 hours a day, to go to a comfortable office that Epstein had set up in West Palm Beach.

This was granted despite explicit sheriff's department rules stating that sex offenders don't qualify for work release.

The sheriff, Ric Bradshaw, would not answer questions, submitted by the Miami Herald, about Epstein's work release.

Neither Epstein nor his lead attorney, Jack Goldberger, responded to multiple requests for comment for this story. During depositions taken as part of two dozen lawsuits filed against him by his victims, Epstein has invoked his Fifth Amendment right against self-incrimination, in one instance doing so more than 200 times.

In the past, his lawyers have said that the girls lied about their ages, that their stories were exaggerated or untrue and that they were unreliable witnesses prone to drug use.

In 2011, Epstein petitioned to have his sex offender status reduced in New York, where he has a home and is required to register every 90 days. In New York, he is classified as a level 3 offender — the highest safety risk because of his likelihood to re-offend.

A prosecutor under New York County District Attorney Cyrus Vance argued on Epstein's behalf, telling New York Supreme Court Judge Ruth Pickholtz that the Florida case never led to an indictment and that his underage victims failed to cooperate in the case.

However, Pickholtz denied the petition, expressing astonishment that a New York prosecutor would make such a request on behalf of a serial sex offender accused of molesting so many girls.

"I have to tell you, I'm a little overwhelmed because I have never seen a prosecutor's office do anything like this. I have done so many [sex offender registration hearings] much less troubling than this one where the [prosecutor] would never make a downward argument like this," she said.

Coming tomorrow: The victims' stories

12:53 LTE

Alan Dershowitz on Twitter: "My..
mobile.twitter.com

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@AlanDersh

My perjuring accusers are Virginia Roberts and Sarah Ransomme. Both have long records of lying. Roberts sold a story claiming that she met Al Gore on Epstein's island. Secret Service records prove he was never on the island. Ransomme claims she has sex tapes of Hillary C and DJT

Alan Dershowitz @AlanDersh

My false accusers won't accuse me on Twitter but I will accuse them: I hereby accuse my false accusers of committing the felony of perjury and challenge them to sue me for defamation. They won't ,because they know the truth will land the...

9:42 PM · Mar 2, 2019 · Twitter for iPhone

441 Retweets **1.5K** Likes

Date: Wednesday, April 17 2019 11:43 AM
Subject: Fwd: FW: Ghislaine Maxwell
From: J <jeevacation@gmail.com>
To: Darren Indyke <[redacted]>;

---------- Forwarded message ---------
From: **Jeffrey Epstein** <jeevacation@gmail.com>
Date: Fri, Mar 4, 2011 at 12:17 PM
Subject: Fwd: FW: Ghislaine Maxwell
To: Alan M. Dershowitz <[redacted]>

Privileged - Redacted

---------- Forwarded message ---------
From: **GMAX** <gmax1@ellmax.com>
Date: Fri, Mar 4, 2011 at 8:28 AM
Subject: FW: Ghislaine Maxwell
To: J Jep <jeevacation@gmail.com>

------ Forwarded Message
From: Mark Cohen <[redacted]>
Date: Fri, 4 Mar 2011 11:14:35 -0500
To: NY Max <gmax1@ellmax.com>
Subject: FW: Ghislaine Maxwell

FYI, following up on my email of this morning. Again, I have no intention of responding unless you direct otherwise.

From: [redacted]
Sent: Friday, March 04, 2011 11:12 AM
To: Brett D. Jaffe
Subject: Ghislaine Maxwell

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We urgently require responses from Ms Maxwell to the following questions. Our deadline is noon tomorrow. My telephone numbers are [redacted].

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On behalf of the Mail on Sunday

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Ms Maxwell initiated a bisexual encounter during which Ms Maxwell rubbed her own breasts on Mr Epstein and directed [redacted] to copy her.
Please respond to these allegations and all others in the original Jane Doe 102 complaint.

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4. [redacted] was paid between US $200 and $ 5000 US sex, depending on whether it involved travel and other men.

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Ms Maxwell and Mr Epstein subsequently travelled with [redacted] to Little St James where she was directed to stage an orgy for Andrew and Mr Epstein during which she performed oral sex on them.

7. [redacted] was paid extra by Mr Epstein or his employees for these sexual encounters.

8. Ms Maxwell knew [redacted] age and laughed about it when she introduced her to Andrew.

9. Ms Maxwell and Mr Epstein tried to persuade [redacted] to bear his child.

10. After sexual encounters with male friends of Mr Epstein and/or Ms Maxwell, Ms Maxwell and Mr Epstein would ask [redacted] explicit questions about what went on.

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12. Ms Maxwell and Mr Epstein arranged for Ehud Barak to have sex with several girls, often at Mr Epstein's Palm Beach house.

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14. Mr Epstein bought Ms Maxwell the helicopter, homes in New York and London and a Mercedes.

------ End of Forwarded Message

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From: J [jeevacation@gmail.com]
Sent: 2/1/2019 10:18:27 AM
To: jeffrey epstein [jeevacation@gmail.com]

Importance: High

prostittion is a state crime. never before a man in his own house charged with soliciting. ! in Florida first offenders are required to take a sex ed class and get pre trial diversion. no criminal record. . . there is a felony solication for the THIRD offense. . A grand jury was held and they found me guilty of one count of felony solitciation . because there were many girls. . mandatory diversion. sentence. . !!!!. a grand jury . ususally only for capital murder cases. . Recarey and Reiter (police chief). pulled my garbage for months, and surveilled the house . letting all the gilrs come and go ? ! called in the FBI. they did not like the grand jury result. and released to the press, the raw sewage of police interviews , ie, no girl was cross examined EVER. . Unheard of. . - the girls retunred the house multiplie times. for 200 dollars for a rub and tug. . no sex. . some worked in the locak massage parlors. most in thier mid twenties. . There is only press stories told my strippers of me buying my girlfiedn from slovakia from her parents . girls under 15. . all made up to get press. . FBI / puts a task force together title " operation leap year " to investigate my personal massage activity ?! nuts. interviews my chiropractor ? medical info. . etc.

[redacted] worked at Mara Lago. Trump knew of it. and came to my house many times during that period. The testimony of the houseman John allessi confiremed it. He never got a massage.
abe gosman a friend of mine . ran into financial difficulty with assited living homes. . His home was listed at 45 million dollars. with no takers for months on end . He and I agreed a price of 30m. (His wife lynn . ends up going to jail for lying to the bankrupty trustee about her jewelry.) this is in the summer of 04. . I became the stalking horse bidder at 36 m. ie if someone bid higher I would receive a fee.
trump buys the house at the telephone auction . only me trump andd his friend pulty the developer.
He quickly puts it on the market for 125 million. serves the purpose of a justification for a high sale later . . and no one will touch it . it is is bough in the name of trump properties llc. . no idea who owns it. or what else it " owns ".
Three years later 08 he sells it to Ryboloolev for approx 100 million. He should have had a 50 million plus capital gain . he tells people and press he spent 20-30 m to fix up. that would justifiy a reduction in captial gains. key question how did he report the sale , if he did at all on his 08 tax return.
He has no money. when he buys the house. His biz model is putting his name on a real estate development and gets a fee for using his name. The hotel biz is just that. someone else buys the hotel. hoping to make a profit from its operation and eventual sale. Trump put his name on it , and get a 2 % fee and maybe a piece of the profit if any on sale. He touts the project as " his " ... . just as in his current financial statements on file as president he lists his " income " as the GROSS receipts of the clubs. with no expenses deducted. not his personal revenue. ie the doral golf club loses money every year. it pays out more than it takes in , but he lists the revenue as his income. AMAZING.

"Trump's relationship with Deutsche Bank has not always been amicable; in November 2008, he had difficulty making payments on a $640 million Deutsch Bank loan – $40 million of which he guaranteed personally – he took out to finance the construction of the Trump tower in Chicago."
https://themoscowproject.org/collusion/trump-sues-deutsche-bank-3-billion/

in july , miraculously , rybololev ve buys the house for roughly the same " 40 plus million dollar " profit "

https://www.washingtonpost.com/news/worldviews/wp/2017/08/24/the-russian-diplomat-found-dead-in-his-pool-in-sudan-is-the-seventh-to-die-since-november/?utm_term=.77b0a287fb11
Joe Recarey dies in june of 18. same m.o. ?

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Date: Friday, March 4 2011 04:45 PM
Subject: Re: Fwd: FW: Ghislaine Maxwell
From: Jeffrey Epstein <jeevacation@gmail.com>
To: The Duke <[redacted]>;

---

just got it two minutes ago.. I ve asked g lawyers to send a letter. Not sure,, it is so salcisous and ridiculous, im not sure how to respond,, the only person she didn't have sex with was Elvis

On Fri, Mar 4, 2011 at 8:40 AM, The Duke <[redacted]> wrote:

What? I don't know any of this. How are you responding?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: The Duke
Sent: Fri Mar 04 16:31:26 2011
Subject: Fwd: FW: Ghislaine Maxwell

---------- Forwarded message ----------
From: **GMAX** <gmax1@ellmax.com>
Date: Fri, Mar 4, 2011 at 8:28 AM
Subject: FW: Ghislaine Maxwell
To: J Jep <jeevacation@gmail.com>

------ Forwarded Message
From: Mark Cohen <[redacted]>
Date: Fri, 4 Mar 2011 11:14:35 -0500
To: NY Max <gmax1@ellmax.com>
Subject: FW: Ghislaine Maxwell

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On behalf of the Mail on Sunday

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Date: Friday, March 4 2011 05:17 PM
Subject: Fwd: FW: Ghislaine Maxwell
From: Jeffrey Epstein <jeevacation@gmail.com>
To: Alan M. Dershowitz <[redacted]>;

Privileged - Redacted

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From: **GMAX** <gmax1@ellmax.com>
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Date: Friday, March 4 2011 05:21 PM
Subject: Re: Fwd: FW: Ghislaine Maxwell
From: Jeffrey Epstein <jeevacation@gmail.com>
To: [redacted]

Privileged - Redacted

On Fri, Mar 4, 2011 at 9:20 AM, Alan Dershowitz [redacted] wrote:

Privileged - Redacted

Sent from my Verizon Wireless BlackBerry

From: Jeffrey Epstein <jeevacation@gmail.com>
Date: Fri, 4 Mar 2011 08:37:01 -0800
To: Alan M. Dershowitz [redacted]
Subject: Fwd: FW: Ghislaine Maxwell

Privileged - Redacted

---------- Forwarded message ---------
From: **GMAX** <gmax1@ellmax.com>
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Date: Friday, July 1 2011 10:38 PM
Subject: Re: Huffington Post
From: Jeffrey Epstein <jeevacation@gmail.com>
To: Peggy Siegal <[redacted]>;

I think a great opportunity has arisen. Just like the headlines of a hotel maid now proven to have lied in the Stauss Kahn case. The girl who accused Prince Andrew can also easily be proven to be a liar. I think Buckingham Palace would love it . You should task someone to investigate the girl [redacted], that has caused the Queens son all this agro. I promise you she is a fraud. you and i will be able to go to ascot for the rest of our lives. I know there is a public police report that no one has had the courage to publish, as they do not want to be seen attacking a " vicitm", but being falsely accused will be the new headline

On Fri, Jul 1, 2011 at 2:43 PM, Peggy Siegal <[redacted]> wrote:

If you rewrite your last email in better grammar, (and so I have a better understanding) I can cut and paste and send it to Arianna Huffington from me.....

Did you know why Prince Albert's Charlene fled to the airport with a one way ticket back to South Africa? Because she found out about a third illegitimate child that is 3 months old...the palace officials followed her to the airport and propably made her an offer she could not refuse...will get details from Jim Coleman when he comes home Sunday night.

In Southampton now. Peg

---- Original Message ----
From: Jeffrey Epstein <jeevacation@gmail.com>
To: Peggy Siegal
Sent: Fri Jul 01 07:18:25 2011
Subject:

should you point out to Ariana Huff, that the same type of person, same as strauss Kahn i s Andrews accuser, ,long criminal record. total liar. Ariana should champion the dangers of false allegations. send a reporter or reporters to investigate,.. the palace would love it, the girl in the photo , was nothing more than a telephone answerer,, she was never 15, according to her version she worked for trump , first at that age, at MAra lago. ITs ridiculous. but the press like strauss kahn is afraid to question women.

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From: Jeffrey Epstein [jeevacation@gmail.com]
Sent: 10/19/2013 12:30:10 AM
To: Fred Haddad [redacted]
CC: Tonja Haddad Coleman [redacted]; Darren Indyke [redacted]; Debbie Fein [redacted]
Subject: Re: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Privileged - Redacted

On Fri, Oct 18, 2013 at 8:10 PM, Fred Haddad <[redacted]> wrote:

Privileged - Redacted

Sent from my iPhone

On Oct 18, 2013, at 6:38 PM, Tonja Haddad Coleman <[redacted]> wrote:

Tonja Haddad Coleman, Esq.
Sent from my iPhone

Begin forwarded message:

From: Sharon Churcher <[redacted]>
Date: October 18, 2013 at 6:32:28 PM EDT
To: "[redacted]" <[redacted]>, "[redacted] <[redacted]>
Cc: Nick Pyke <[redacted]>, Liz Hartley <[redacted]>
Subject: Request for comment from The Mail on Sunday with noon ET Saturday deadline re Mr Bradley Edwards vs Mr Jeffrey Epstein

Dear Sirs:

We are preparing an article about the calendaring today of Mr Edwards' claim against Mr Epstein for jury trial and the witness list which names [redacted] and other young women who allege they were underage victims of Mr Epstein.

Mr Edwards claims that Mr Epstein maliciously attempted to intimidate him and his clients into retracting their claims.

Ms [redacted] further has stated to us that she intends to testify that she was flown to London by Mr Epstein and instructed to have sex at age 17 with Prince Andrew. She alleges that she was paid $15k for this encounter.

She claims that on another occasion, Mr Epstein flew two young women to a dinner for the purpose of entertaining President Clinton. She claims she herself was sex trafficked to several other men, whose contact information is contained in an address book of Mr Epstein's filed in court records.

May we have a comment please? Our deadline is 1pm tomorrow (SATURDAY) ET.

Yours sincerely,
Sharon Churcher

The Mail on Sunday (New York office)

Ph: [redacted] or [redacted]

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Equity Strategy Focus Point

Death and tax reform

Bank of America Merrill Lynch

Quantitative Analysis

29 January 2017 Corrected

Deep dive on corporate tax reform

OK, maybe it's not as inevitable as death and taxes, but some form of corporate tax reform seems likely. It is a stated priority of President Trump and has widespread Congressional support. We here focus on four components that could have big equity implications. We assess the impacts at a market, sector, and industry level, and plan to update and augment this work as more details come to light.

Potential near-term boost to EPS, long-term impact varies

Our 2018 S&P 500 EPS estimate of $137 already implies healthy two-year growth of +16%. Tax reform in its entirety could add as much as $5-6 to near-term EPS, as benefits are front-loaded. The sustained impact depends: under a 20% tax rate, the Blueprint would be modestly accretive; under a 15% rate, this annual benefit could triple; but a 25% tax rate that would appease the deficit hawks could shave $3.50 off of earnings each year. We also estimate a one-time $8-9 charge to GAAP EPS associated with the repatriation tax (Table 1).

Cutting corporate tax rate could add $8 to EPS

Our starting point is the US statutory corporate tax rate. If it were lowered from 35% to 20% and the US moved to a territorial tax system (no longer taxing foreign profits), it would boost S&P 500 EPS by an estimated 12% ($17 to 2018 EPS). We assume companies would be able to retain half of the benefit ($8) and the remainder would be passed on to customers or competed away. For instance, a lasting impact to Utilities' profits is unlikely, as the benefit would be passed on via regulated pricing.

Repatriation: Buybacks could boost EPS by 3%

Both Trump and the Blueprint support a mandatory (as opposed to 2004's optional) tax of overseas earnings of US firms' subsidiaries at reduced rates. Non-Financials in the S&P hold at least $1.2tn in overseas cash (mostly Tech and Health Care). If half was used for buybacks, this could add 3% ($4) to S&P 500 EPS. A redux of 2004 where companies used 80% of cash for buybacks may be less likely, in our view. For if repatriation is accompanied by an end to interest expense deductions, companies may choose to pay down debt over buybacks.

Border adjustment tax (BAT) hits EPS by $5-6

While Trump has described the BAT as being "too complicated," White House press secretary Spicer's recent comments call into question his stance. This is a key component of the Blueprint and would generate significant revenue. First-order impacts could be significant, with border adjustments detracting $5-6 from 2018 EPS — nearly 80% of the drag comes from the consumer sectors. The second order impacts — product pricing, pricing within the supply chain, exchange rates, foreign policy reactions, etc. — while harder to quantify, are important to consider.

End to interest deductibility could detract 4% from EPS

We estimate that over time, the removal of the interest expense deduction would detract about 4% from S&P 500 EPS. An increase in the cost of debt by an incremental 25% could have longer term ramifications for capital structures and funding..

Tax reform winners and losers

We include stock screens for potential beneficiaries and victims of tax cuts, repatriation and interest deductibility changes, as well as industries most helped/hurt most by a BAT. Note that the very fact that there are companies and industries that have the potential to be very negatively impacted could call into question the likelihood of passage.

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Refer to important disclosures on page 26 to 27.

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Table 1: Estimated impact of tax reform on S&P 500 2018 EPS

Tax policy	15%	20%	25%
Tax rate change	10.50	8.00	5.00
End int. deduct. – init. impact*	-0.50 to -1.00	-0.50 to -1.50	-0.50 to -2.00
Border adjustments	-4.00	-5.50	-6.50
Repatriation buybacks	4.00	4.00	4.00
Total init. Impact	**9.50 to 10.00**	**5.00 to 6.00**	**0.50 to 2.00**
End int. deduct. – recur. impact	-3.50	-5.00	-6.00
Recurring impact	**7.00**	**1.50**	**-3.50**
One-time repat. tax	-8.50	-8.50	-8.50

Source: BofAML US Equity & Quant Strategy, FactSet, Compustat, S&P

*Assumes end to interest deductibility only applies to new debt, where we estimate 70-90% of debt is long-term.

Note: For this exhibit, we assume that 100% of the cash is repatriated and 50% of it is spent on buybacks. For different buyback assumptions, please see the section on repatriation.

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The costs and benefits of tax reform

2017 could be a watershed year from a tax reform perspective. Trump has continuously stated that tax reform is a priority, and there is evidence of widespread support in Congress. Tax reform could be enacted through reconciliation without the risk of being filibustered, suggesting the timing could be imminent. Corporate tax reform could have a significant impact on S&P 500 earnings, corporate behavior and capital markets. Much has been written on the timing, funding and process by which corporate tax reform could be enacted. In this report, we use House Speaker Paul Ryan's Blueprint proposal as a starting point in quantifying the impact of corporate tax reform on the S&P 500, with some scenario analysis to account for differences included in the final bill (such as Trump's proposals). Our analysis is focused specifically on the impact of corporate tax reform, however we recognize that there are many other factors that can impact the sensitivity analysis (e.g. changes to household income tax rates, infrastructure spending, etc.).

We estimate that the Blueprint proposal would initially boost S&P 500 EPS by $5-6, assuming the end of interest expense deductions only applies to new debt, or is phased in over time. But the devil is in the details. Over time, the loss of the interest tax shield would be a significant drag on earnings as existing debt is refinanced. Additionally, the corporate tax rate is critical in determining whether or not the tax reform policies end up being accretive to earnings on a sustained basis. We estimate that at the 20% tax rate, the Blueprint would be modestly accretive, the benefit would triple under Trump's proposed 15% tax rate, but at a higher 25% tax rate that would appease the deficit hawks in Congress, the benefit would turn to a negative over time (Table 2). We also estimate a one-time $8-9 charge to GAAP EPS that would be associated with the discounted repatriation tax.

Table 2: Estimated impact of tax reform on S&P 500 2018 EPS

Tax policy	15%	20%	25%
Tax rate change	10.50	8.00	5.00
Ending interest deductibility – initial impact*	-0.50 to -1.00	-0.50 to -1.50	-0.50 to -2.00
Border adjustments	-4.00	-5.50	-6.50
Share count reduction from buybacks (50%)	4.00	4.00	4.00
Total initial impact	**9.50 to 10.00**	**5.00 to 6.00**	**0.50 to 2.00**
Ending interest deductibility – recurring impact	-3.50	-5.00	-6.00
Recurring impact	**7.00**	**1.50**	**-3.50**
One-time repatriation tax (8.75%), GAAP charge	-8.50	-8.50	-8.50

Source: BofAML US Equity & Quant Strategy, FactSet, Compustat, S&P
*Assumes end to interest deductibility only applies to new debt, where we estimate 70-90% of debt is long-term.
Note: For this exhibit, we assume that 100% of the cash is repatriated and 50% of it is spent on buybacks. For different buyback assumptions, please see the section on repatriation.

In the following pages, we focus on the following topics that have large implications for US equity investors, but it is important to consider corporate tax reform holistically rather than drawing major implications from each measure in isolation:

- Reducing the US corporate tax rate
- Repatriation - mandatory tax on overseas profits
- Border adjustment tax
- Removal of interest expense deduction

The government revenue associated with each of these is included in the table below.

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Table 3: Estimated 10-year* revenue impact from tax plans, $bn
Based on estimates from both the Tax Policy Center and Tax Foundation

	House Plan	Trump Plan
Corporate Tax Reform	**-890 to -1200**	**-1940 to -2630**
Lower corporate tax rate (20% under House, 15% under Trump)	-1800 to -1850	-2120 to -2350
Full capex expensing, interest expense no longer deductible (mandatory under House, choice between two under Trump)**	-450 to -1040	-320 to -590
Deemed repatriation of overseas earnings	140 to 190	150-200
Move to territorial tax system	-90 to -160	n/a
Border adjustment	1070 to 1180	n/a
Changes to individual income/payroll taxes	**-980 to -2020**	**-2190 to -3730**
Repeal estate/gift taxes	**-190 to -240**	**-170 to -240**
Total (static) estimate	**-2420 to -3100**	**-4370 to -6150**

*Tax Foundation assumes impact over 2016-2025 and Tax Policy Center assumes impact over 2016-2026
**Under House plan, Tax Foundation separately breaks out estimates for full capex expensing (-$2236) and disallowing interest deduction on new loans (+$1194).
Note: estimates rounded to nearest ten billion, with range to incorporate estimates from both sources. Other elements to corporate tax reform not itemized above include eliminating the AMT, repealing certain corporate tax deductions, etc.
Source: Urban-Brookings Tax Policy Center, Tax Foundation, BofA Merrill Lynch US Equity & US Quant Strategy (calculation of ranges)

From a sector and industry perspective there are haves and have-nots based on each policy, but in aggregate most sectors have some puts and some takes based on tax reform. The table below shows some relevant aggregate statistics by sector that inform our subsequent analysis.

Table 4: Estimated overseas cash vs. last 12 month effective tax rate vs. COGS net exports by sector

Sector	Est. cash overseas ($bn)	Overseas cash % mkt cap	Effective tax rate LTM	Net % imported vs exported COGS
Discretionary	75	2.9%	28%	-14%
Staples	68	3.2%	29%	-13%
Energy	39	2.6%	21%	-3%
Health Care	187	7.0%	23%	-4%
Industrials	127	6.0%	26%	1%
Technology	647	14.9%	20%	-9%
Materials	24	4.0%	23%	3%
Telecom	1	0.2%	29%	0%
Utilities	2	0.3%	28%	0%
S&P 500 ex. Financials & Real Estate	**1,170**	**5.7%**	**25%**	-6%

Source: BofAML US Equity & Quant Strategy, FactSet, Bloomberg

Cutting the corporate tax rate

The best starting point for analyzing corporate tax reform is the US statutory corporate tax rate, as this rate is critical in determining the impact of other proposed changes (border adjustments, interest deductibility, etc.). If the tax rate were lowered from 35% to 20% and the US moved to a territorial tax system (no longer taxing foreign profits), all else equal, we estimate an initial boost to S&P 500 EPS of 12% ($17 to 2018 EPS). However, over time, some of this benefit could be passed on to customers via lower prices — for instance, it is unlikely that there will be any major long-lasting impact from tax reform for Utilities sector profits, as any benefit/cost would likely be passed through to customers when incorporated into each company's regulated pricing. The benefit would also be offset by some of the other changes discussed in subsequent sections. We assume that S&P 500 companies would be able to retain half of the benefit, or roughly $8 of 2018E EPS. Below, we show the estimated EPS impacts on each sector based on a tax rate of 20%.

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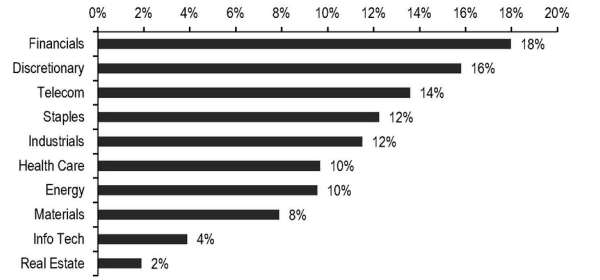
Chart 1: Sector EPS estimated impact from 20% rate



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

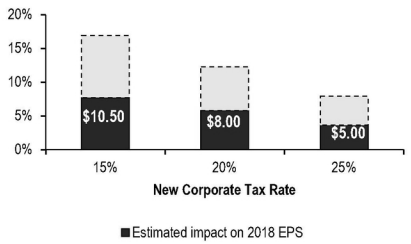
While the effective tax rate of the S&P 500 is generally about 28% (currently closer to 25% due to the recent commodity recession), we estimate that the tax rate for the S&P 500's domestic operations is much higher at roughly 33% — although this includes state and local taxes. If all companies with tax rates above the proposed new tax rate of 20% were to drop to 20%, and no companies provisioned for US taxes on foreign profits, we estimate the domestic effective tax rate for the S&P 500 would fall in line with its foreign tax rate of roughly 19%. This would represent a 9ppt decrease in the current S&P 500 tax rate and a 12% increase in EPS. We show the sensitivity to S&P 500 EPS to different assumed tax rates in the chart below, but we reiterate that these estimates exaggerate the actual impact on profits, as a significant portion of these benefits would likely be passed on to consumers via lower prices. We assume that in aggregate, roughly half of the gains from the lower tax rate would be retained (i.e. half of the amounts shown in the sensitivity analysis in Chart 2).

Table 5: Impact of 20% domestic corporate tax rate

Sector	Current tax rate	New tax rate	Change
Discretionary	30%	19%	-12ppt
Staples	29%	20%	-9ppt
Energy	41%	32%	-9ppt
Financials	33%	21%	-11ppt
Health Care	25%	16%	-9ppt
Industrials	32%	23%	-9ppt
Info Tech	18%	14%	-4ppt
Materials	28%	23%	-5ppt
Real Estate	9%	7%	-2ppt
Telecom	29%	20%	-9ppt
Utilities	32%	20%	-12ppt
S&P 500	**28%**	**19%**	**-9ppt**

Source: BofAML US Equity & Quant Strategy, FactSet, S&P
* Current tax rates may differ from other sources, as this analysis is based on companies' 5-yr median fiscal year domestic and foreign tax data from annual filings.

Chart 2: Benefit to 2018 S&P 500 EPS from lower tax rates



Source: BofAML US Equity & Quant Strategy
Note: Our base case assumes that half of the benefit would be passed on to customers, competed away or offset by other changes to the tax code. Thus, we would expect the uplift to our EPS forecast to be roughly half the calculated benefit from simply lowering the corporate tax rate.

The market is beginning to price in the benefits of tax cuts , but we may still be in the early days – note that potential beneficiaries of fiscal stimulus (i.e. infrastructure spending) have seen an 18% multiple re-rating but de minimis fundamental support, whereas potential beneficiaries of lower corporate tax rates have seen performance driven nearly equivalently by multiples and earnings.

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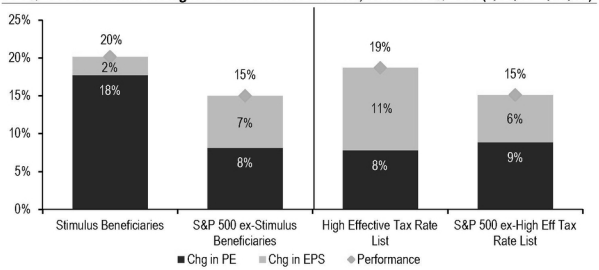
Chart 3: Decomposition of performance of 1) S&P 500 stocks exposed to fiscal stimulus* and 2) top 50 S&P 500 stocks with the highest L12M effective tax rates, vs. rest of S&P 500 (1/31/16-1/23/17)



*Stocks identified by BofAML analysts as stimulus beneficiaries in 150 stocks with exposure to the Fiscal Stimulus theme 21 Aug. 2016
Source: FactSet, BofA Merrill Lynch US Equity & US Quant Strategy

Potential beneficiaries: See Table 19 at the end of this report for a screen of domestically-oriented companies with high effective tax rates which could potentially benefit from a lower corporate tax rate.

Repatriation

Repatriation likely under both Blueprint and Trump plans

Mandatory tax on overseas profits of 8.75% under Blueprint, 10% under Trump

The US currently operates under a tax system in which the domestic earnings of US corporates are taxed at the federal US corporate rate (35%) and any overseas earnings that are repatriated are taxed at this rate less a credit for foreign taxes paid on those same earnings. Many multinationals' foreign earnings thus remain parked offshore, allowing corporations to avoid the tax hit associated with bringing them back to the US. Both Trump and the House (under Ryan) have proposed a mandatory tax of overseas earnings of US firms' foreign subsidiaries at reduced rates, such that this cash can be brought back and put to work in the US. This differs from the 2004 repatriation tax holiday, which was optional.

Under the Blueprint, accumulated overseas earnings will be subject to a transition tax of 8.75%[1] (for those held in cash/cash equivalents) or 3.5% (for all other holdings), with companies able to pay the tax liability over an eight-year period. This would be part of broader tax reform, where a proposed territorial tax system would exempt companies' foreign income from US taxes and prevent future buildup of overseas profits as companies would be free to bring them home. Trump's plan calls for a one-time deemed repatriation of overseas corporate profits at a 10% tax rate.

Table 6: Blueprint vs. Trump tax plans for taxing offshore earnings of US firms' foreign subsidiaries

Plan	Tax rate on accumulated overseas earnings
Blueprint	8.75% for cash/cash equivalents, 3.5% of all other holdings
Trump tax plan	10%

Source: donaldjtrump.com, abetterway.speaker.gov

The Tax Policy Center estimates that a repatriation tax holiday would generate approximately $150bn in tax receipts under Trump's plan (over 10 years) and $140bn

[1] Note: The effective tax rates of 8.75% and 3.5% under the Blueprint are based on an allowable deduction of 75% (for deferred earnings held in cash/liquid assets) or 90% (for the non-cash portion), with the remainder taxed at the US corporate tax rate, i.e. 35%(1-75%) = 8.75% and 35%(1-90%) = 3.5%. This methodology was proposed by Dave Camp's (former chairman of the House Committee on Ways and Means) Tax Reform Act of 2014.

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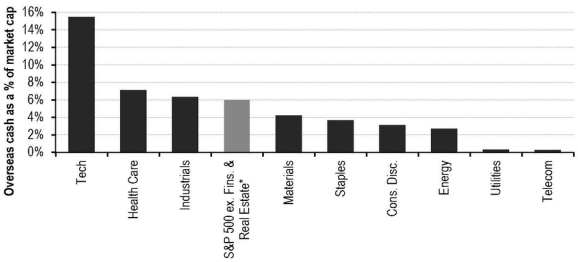
under the Blueprint (over eight years). The Tax Foundation similarly estimates that a repatriation act could drive spending amounting to $185-200bn in revenues through 2025, which could help fund infrastructure/defense spending.

S&P 500 companies could bring back over $1tn – mostly in Tech & Health Care

Our FX team has written that US corporates in aggregate (including Financials) hold ~$2tn in cash overseas, and their work suggests that nearly half is concentrated within 20 companies. Similarly, as we discuss below, half of the repatriated cash following the 2004 Homeland Investment Act came from just 15 companies, predominantly in Pharma and Tech. Our own analysis of the S&P 500 (based on filings and estimates from our analysts) suggests that non-Financials in the S&P hold approximately $1.2tn overseas, nearly three-quarters of which is in Tech and Health Care (Chart 4).

Chart 4: Estimated overseas cash as a % of mkt. cap by sector for the S&P 500 (excludes Financials and Real Estate)



Note: Overseas cash based on company disclosures where available, BofAML analyst estimates, and BofAML US Equity & Quant Strategy estimates using overseas sales as a guide where the former two were not available. For some companies, analyst estimates are for total accumulated overseas profits (which may not all be in cash). *S&P ex. Fins. & Real Estate cash is as a % of total S&P 500 market cap
Source: Bloomberg, FactSet, BofA Merrill Lynch US Equity & US Quant Strategy, BofA Merrill Lynch Global Research

Repatriation in context: a look back at 2004

The last repatriation holiday in the US was the Homeland Investment Act (HIA) of 2004 (part of the American Jobs Creation Act), which allowed for a one-time repatriation of foreign earnings by US multinationals at a reduced effective tax rate of 5.25% (vs. the statutory 35% rate), based on an allowable exemption of 85% of foreign earnings from US taxes (35% x [1-85%] = 5.25%). This deduction could be claimed in the tax year beginning before or after the passage date in Oct. 2004. Approximately $300bn was repatriated, according to the Bureau of Economic Analysis (BEA)'s U.S. International Transactions Accounts Data, vs. an average of $60bn over the prior five years. The IRS estimates[2] that 843 US companies took advantage of the act.

Despite HIA's intent; most repatriated cash was spent on buybacks/dividends

Despite the U.S. Treasury Department's guidelines that repatriated earnings should be spent on capital investment, R&D, M&A, and other pro-growth uses such as hiring, this was not ultimately the result: the National Bureau of Economic Research (NBER) estimates[3] that $0.92 of every $1.00 brought back was used to return cash to shareholders ($0.79 for buybacks and $0.15 for dividends)[4], and that repatriation ultimately did not lead to a pick-up in capex, employment or R&D. In fact, a 2011 report by US Senate Permanent Subcommittee on Investigations[5] found that the top 15

[2] Redmiles, Melissa: "The One Time Received Dividend Deduction", https://www.irs.gov/pub/irs-soi/08codivdeductbul.pdf
[3] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes: "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act", NBER Working Paper No. 15023, June 2009, http://www.nber.org/papers/w15023.pdf.
[4] The $0.79 for buybacks and $0.15 for dividends does not sum to the $0.92 cash return figure due to the NBER's calculation methodology.
[5] United States Senate Permanent Subcommittee on Investigations: "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals", Majority Staff Report, October 11, 2011

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repatriating companies—which accounted for 52% of the total repatriated amount—actually reduced their US workforce and decreased their R&D spending following the repatriation act. The authors of the NBER study point out that cash is fungible, and firms were able to bypass the guidelines on how repatriated cash should be used.

Table 7 shows the top 15 repatriating companies following the HIA, and IRS estimates for the proportion of repatriated cash by industry are in Table 8.

Table 7: Top 15 repatriating companies based on the 2004 HIA

Company	Repatriated Amount ($bn)
Pfizer	35.5
Merck	15.9
Hewlett Packard	14.5
Johnson & Johnson	10.7
IBM	9.5
Schering-Plough	9.4
Bristol Myers	9.0
Eli Lilly	8.0
DuPont	7.7
Pepsi Co, Inc.	7.4
Intel	6.2
Coca-Cola	6.1
Altria	6.0
Procter & Gamble	5.8
Oracle	3.1

Source: Data provided by corporations in response to U.S. Senate Permanent Subcommittee on Investigations survey

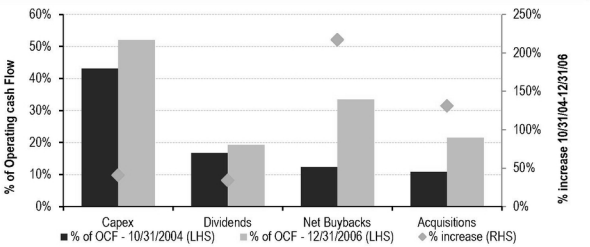
Table 8: Corporations Repatriating Dividends Under IRC Section 965, Selected Items, by Selected Major and Minor Industry of the Parent Corporation, Tax Years 2004-2006

Industry	% of Repatriated Cash Dividends
Pharmaceutical and medicine manufacturing	29%
Computer and electronic equipment manufacturing	19%
Other manufacturing	8%
Food manufacturing	6%
Other chemical manufacturing	5%
Information (including software publishers)	4%
Finance, insurance, real estate, rental and leasing	4%
Transportation equipment manufacturing	3%
Management of companies and enterprises	3%
All other industries	2%
Paper manufacturing	2%
Machinery manufacturing	2%
Electrical equipt, appliance & component manufacturing	2%
Other services	2%
Basic chemical manufacturing	2%
Fabricated metal product manufacturing	1%
Retail trade	1%
Wholesale trade, nonduarable goods	1%
Wholesale trade, durable goods	1%
Profiessional, scientific and technical services	1%
Transportation and warehousing	0%
Plastics and rubber products manufacturing	0%
Primary metal manufacturing	0%

Note: all figures are IRS estimates
Source: IRS (https://www.irs.gov/pub/irs-soi/08codivdeductbul.pdf)

Our data for the S&P 500 similarly suggests that share repurchases saw the biggest pick-up in terms of cash use from when the HIA was passed in October 2004 through the end of 2006. Buybacks jumped over 200% over this period, where they went from 12% of operating cash flows to 33% of operating cash flow by the end of 2006.

Chart 5: Capex, dividends, buybacks and M&A for the S&P 500 ex-Financials: increase from 10/31/2004-12/31/2006 and % of Operating Cash Flow during both dates



Source: FactSet, BofA Merrill Lynch US Equity & US Quant Strategy

(https://www.hsgac.senate.gov/subcommittees/investigations/media/new-data-show-corporate-offshore-funds-not-trapped-abroad-nearly-half-of-so-called-offshore-funds-already-in-the-united-states)

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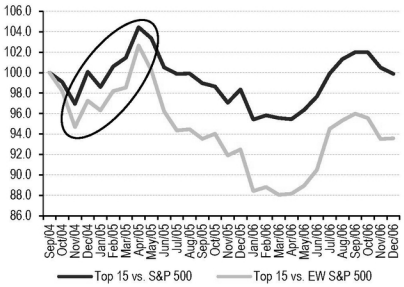
No alpha from repatriation and multiples actually compressed

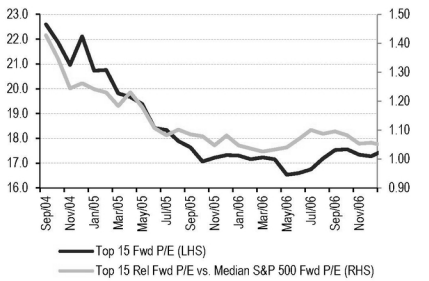
Our analysis of the top 15 repatriating companies (from Table 7) suggests that while these companies initially outperformed both the S&P 500 and equal-weighted S&P 500 from November 2004-April 2005 (by 6ppt and 5ppt, respectively), they subsequently underperformed during the remainder of 2005 and early 2006 (Chart 6). From the end of September 2004 through year-end 2006, these stocks were up 27% on average, in-line with the overall S&P 500, and below the equal-weighted benchmark's 36% return. And multiples for these stocks compressed over the majority of this period, both on an absolute basis and relative to the benchmark (Chart 7).

Chart 6: Cumulative relative performance (equal-weighted) vs. S&P 500 and EW S&P 500 of Top 15 repatriating companies, 9/30/04-12/31/06



Source: U.S. Senate Permanent Subcommittee on Investigations survey (for Top 15 repatriating stocks), FactSet, Bloomberg, BofA Merrill Lynch US Equity & US Quant Strategy

Chart 7: Fwd. P/E of Top 15 repatriating companies – absolute and relative to the S&P 500 median fwd. P/E, 9/30/04-12/31/06



Source: U.S. Senate Permanent Subcommittee on Investigations survey (for Top 15 repatriating stocks), FactSet, Bloomberg, BofA Merrill Lynch US Equity & US Quant Strategy

Post-repatriation cash use: will this time be different?

Valuations, investor preference, growth & leverage ratios suggest less buybacks

While any potential restrictions on the use of repatriated earnings are still unknown, we suspect that a pick-up in buybacks is likely, but that a lower proportion will be used for buybacks today than during the last repatriation holiday. Valuations were generally more attractive in 2004-2005 on most metrics (Table 9), and we've found that buybacks tend to be more rewarded when stocks are cheap (Chart 8). Additionally, the largest buybacks have not generated alpha for the last several years, as investors have increasingly agitated for companies to use their excess cash on pro-growth investments (namely capex.) According to BofAML's latest Global Fund Manager Survey, 60% of investors want companies to increase capex spending, vs. 17% who want companies to return cash to shareholders (Exhibit 1). This compares to a majority of investors desiring companies to return cash to shareholders when the HIA was passed in late 2004.

Companies may also feel less pressure to bolster per share metrics by reducing share count if top line is recovering and organic growth is finally materializing. And from a capital structure perspective, if leverage loses its tax benefit, given that leverage ratios are already high (see below) companies may be less likely to reduce their equity capital base, as that would marginally increase their weighted average cost of capital.

Special dividends, pay-down of debt may be other likely uses

Companies may also return the cash to shareholders by issuing a one-time special dividend: income remains in-demand, given that both interest rates and dividend payout ratios remain historically low. And if a repatriation tax holiday comes within the context of broader tax reform that includes an end to the deductibility of interest expense, companies may choose to pay down debt over other uses of cash, in an attempt to skew their balance sheets less toward debt and more toward equity (see the section on no

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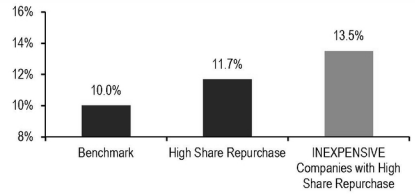
interest tax shield later in this report). Deleveraging balance sheets may also be spurred by a continued environmwnt of rising interest. Leverage for S&P non-Financials has steadily been ticking up over the last few years, and, if we exclude the cash-rich Technology sector, leverage is approaching all-time highs (Chart 9).

Table 9: S&P 500 valuations: October 2004 vs. today

Metric	10/31/2004	Today (12/31/16)
Fwd P/E	15.6	16.9
Trailing P/E	16.7	22.0
Median Fwd P/E	16.2	17.3
P/B	2.8	2.9
EV/EBITDA	11.6	11.7
P/S	1.5	2.0
EV/Sales	2.2	2.3

Source: FactSet, S&P, BofA Merrill Lynch US Equity & US Quant Strategy

Chart 8: Average Annual Return of Russell 1000 Top Quintiles by factor (1986-present)

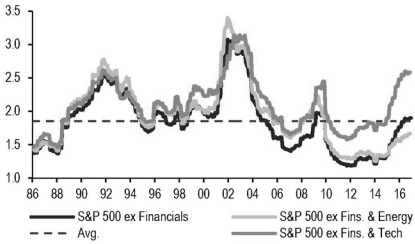


Note: valuation factor used to determine inexpensive companies is FCF/P
Source: FactSet,, BofA Merrill Lynch US Equity & US Quant Strategy

Exhibit 1: BofAML Global Fund Manager Survey (January 2017): What would you most like to see companies do with cash flow?

Source: BofA Merrill Lynch Global Fund Manager Survey (17 January 2017)

Chart 9: Net Debt/EBITDA for the S&P 500 ex Financials (and excluding Energy and Tech)



Source: FactSet, BofA Merrill Lynch US Equity & US Quant Strategy

Potential EPS impacts

$8-9 (6-7%) hit to GAAP EPS from the mandatory tax on accumulated overseas profit

We estimate that a tax of accumulated overseas profits of $1.2tn would result in a cash tax impact of $100-120bn (which may be allowed to be paid over 8-10 years), and a one-time hit to GAAP EPS of $8-9 (a lower $65-80bn, given that a several large multinationals such as AAPL already provision for US taxes on a portion of their overseas profit, resulting in effective US tax rates well above the US statutory rate). Our analysis assumes Trump's/the Blueprint's proposed rates of 8.75%/10%, and that all overseas profits are hit with this one-time tax, as suggested by their plans. See Table 10.

Note that our estimate of ~$1.2tn of cumulative profits overseas is based on estimates from us, our fundamental analysts, and company filings, where in many cases only overseas cash but not other indefinitely invested earnings are disclosed/estimated. Thus, the tax on these earnings could be slightly higher, though the Blueprint would tax earnings not held in cash at a lower 3.5% rate. (We conservatively assume our estimated $1.2tn is all cash and use the higher 8.75% rate under the Blueprint and 10% under Trump's plan in our below analysis).

Bank of America Merrill Lynch

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Table 10: Tax impact from taxation of accumulated overseas profits at 10%/8.75% rates (assuming mandatory tax i.e. all overseas profits are taxed)

	Cash tax impact ($bn)		One-time tax hit to GAAP earnings	
Sector	**Trump (10%)**	**Blueprint (8.75%)**	**Trump (10%)**	**Blueprint (8.75%)**
Consumer Discretionary	7.5	6.5	7.5	6.5
Consumer Staples	6.8	5.9	6.8	5.9
Energy	3.9	3.4	3.9	3.4
Health Care	18.7	16.4	18.7	16.4
Industrials	12.7	11.1	12.7	11.1
Information Technology	64.7	56.6	26.0	22.7
Materials	2.4	2.1	2.4	2.1
Telecommunication Services	0.1	0.1	0.1	0.1
Utilities	0.2	0.2	0.2	0.2
S&P 500 ex. Financials & Real Estate	**117.0**	**102.4**	**78.3**	**68.5**
S&P 500 GAAP EPS impact			**($9)**	**($8)**

Source: FactSet, Bloomberg, BofAML Global Research estimates, BofA Merrill Lynch US Equity & US Quant Strategy

We estimate share buybacks add $4 (or as high as $6) to EPS (GAAP & non-GAAP)

If the full $1.2tn that we estimate for overseas cash for the S&P 500 ex. Financials & Real Estate is brought back (given the tax is mandatory and will be paid either way) and 50% is used on buybacks (~3% of S&P 500 market cap), this could add ~$4 to S&P 500 EPS. And if 80% (~4% of market cap) were used on buybacks, similar to NBER's estimate of what occurred following the 2004 tax holiday, this could add $6 to EPS. (The difference between the Trump and Blueprint tax rates is small, leading to only cents in index EPS.) If one assumed companies only brought half of their offshore cash home immediately, even though the full amount was taxed, these benefits would be cut in half.

Note that buyback programs may span several years, which could spread out some of the EPS benefit below. But if one assumes a buyback is fully executed in Year 1, this provides a one-time boost to EPS growth and a recurring benefit to future EPS given a permanently lower share count.

Table 11: Impact to S&P 500 EPS based on various buyback scenarios

% used for buybacks:	**10%**	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**	**100%**
Trump (10% tax)	1%	1%	2%	2%	3%	3%	4%	4%	5%	6%
Blueprint (8.75% tax)	1%	1%	2%	2%	3%	3%	4%	5%	5%	6%
Benefit to 2017 EPS:	**$1**	**$1**	**$2**	**$3**	**$4**	**$4**	**$5**	**$6**	**$7**	**$7**
Benefit to 2018 EPS:	**$1**	**$1**	**$2**	**$3**	**$4**	**$5**	**$5**	**$6**	**$7**	**$8**

Assumes 100% of overseas cash is brought back (given tax is mandatory)
Source: FactSet, Bloomberg, BofA Merrill Lynch Global Research estimates, BofA Merrill Lynch US Equity & US Quant Strategy

Below we calculate the potential impact to sectors' EPS under various buyback scenarios. Differences are small under the Trump vs. Blueprint tax rates.

Table 12: Impact to sector EPS from various buyback scenarios under Trump (10% tax rate)

	% used for buybacks:									
	10%	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**	**100%**
Cons. Disc.	0%	1%	1%	1%	1%	2%	2%	2%	3%	3%
Staples	0%	1%	1%	1%	2%	2%	2%	3%	3%	3%
Energy	0%	0%	1%	1%	1%	1%	2%	2%	2%	2%
Health Care	1%	1%	2%	3%	3%	4%	5%	5%	6%	7%
Industrials	1%	1%	2%	2%	3%	4%	4%	5%	5%	6%
Tech	1%	3%	4%	6%	7%	9%	11%	13%	14%	16%
Materials	0%	1%	1%	2%	2%	2%	3%	3%	4%	4%
Telecom	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Utilities	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Assumes 100% of overseas cash is brought back (given tax is mandatory)
Source: FactSet, Bloomberg, BofA Merrill Lynch Global Research estimates, BofA Merrill Lynch US Equity & US Quant Strategy

Table 13: Impact to sector EPS from various buyback scenarios under Blueprint (8.75% tax rate)

	% used for buybacks:									
	10%	**20%**	**30%**	**40%**	**50%**	**60%**	**70%**	**80%**	**90%**	**100%**
Cons. Disc.	0%	1%	1%	1%	1%	2%	2%	2%	3%	3%
Staples	0%	1%	1%	1%	2%	2%	2%	3%	3%	3%
Energy	0%	0%	1%	1%	1%	1%	2%	2%	2%	3%
Health Care	1%	1%	2%	3%	3%	4%	5%	5%	6%	7%
Industrials	1%	1%	2%	2%	3%	4%	4%	5%	5%	6%
Tech	1%	3%	4%	6%	8%	9%	11%	13%	15%	16%
Materials	0%	1%	1%	2%	2%	2%	3%	3%	4%	4%
Telecom	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Utilities	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Assumes 100% of overseas cash is brought back (given tax is mandatory)
Source: FactSet, Bloomberg, BofA Merrill Lynch Global Research estimates, BofA Merrill Lynch US Equity & US Quant Strategy

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Cross-asset implications of repatriation

Repatriation should spur USD-buying – up to 40% may be non-USD denominated

While few companies disclose the currency composition of their offshore cash, our FX team estimates that 60-75% is already in USD while 25-40% is non-dollar-denominated. (If we extrapolate based on the S&P 500's geographic revenue exposure, the largest proportion could be in Europe, followed by emerging Asia.) This may result in upward pressure on the USD (which they estimate could amount to $250-$400bn if half of all offshore cash, which they estimate at ~$2tn, was repatriated). Their analysis of the EUR-USD during the last repatriation holiday suggests an "announcement effect" is likely, as the dollar strengthened ahead of the bulk of the actual repatriation flows.

Repatriation could put upward pressure on bank funding costs

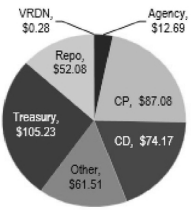
Our rates team's analysis of some of the largest multinationals with offshore cash suggests ~70% of cash is invested in securities with maturities greater than one year, with the remaining 30% having shorter maturities. See table below. They believe repatriation could put upward pressure on bank funding costs as firms reduce their holdings in these short-term investments. According to Crane Data on offshore money fund holdings, our rates team cites that $161bn of offshore funds are held in commercial paper and CDs, of which the majority are from financial institutions with Japan, France and Canada the largest issuers.

Table 14: Offshore holdings and investment allocation for select firms (see footnote) per BofAML Rates team (as published 12/9/2016)

Allocation*	
Cash & MMF	8%
CP & CD	5%
Tsy & Agy	35%
Corporate	36%
Non-US Sov	4%
Other	12%
Maturity of securities holdings**	
<1y	28%
1-5y	59%
5-10y	7%
>10y	6%

*Allocation = weighted avg of holdings across all company investments for AAPL, MSFT, CSCO, ORCL, GOOG, MRK, INTC and PFE. **Maturities = weighted avg. of holdings from MSFT, CSCO, GOOG, INTC.
Source: BofAML Global Research, company 10Q's

Exhibit 2: Offshore money fund USD asset holdings ($bn) as of 9/30/16



Source: Crane data, BofA Merrill Lynch Global Research

Potential beneficiaries: See Table 20 for a screen of companies with high (>10%) overseas cash to market capitalization ratios which could potentially benefit from repatriation.

Border adjustment tax analysis

A new tax policy outlined in the Blueprint proposal that has been getting a lot of attention recently is the border adjustment tax, or the application of border adjustments to a company's imports and exports. While Trump has described the proposal as being "too complicated," it is a key component of the Blueprint plan and should not be ignored. Additionally, White House press secretary Sean Spicer's recent reference to "...the plan taking shape right now, using comprehensive tax reform as a means to tax imports from countries..." could be a sign that Trump is not as against the proposal his other comments would indicate.

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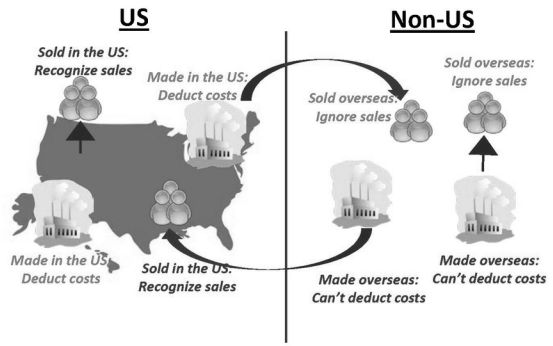
This policy would effectively result in the tax authorities recognizing all sales that take place in the US (regardless of where they are produced) and all the domestic costs incurred to produce goods and services for customers (regardless of where the sale takes place). As a result, net importers (such as many retailers) would suffer, as they would have to pay taxes on their domestic sales without being able to deduct a significant portion of their costs of production. Conversely, net exporters (companies with much of their production in the US but sales outside of the US) would stand to benefit from not having to pay taxes on their foreign sales while being able to deduct a significant proportion of production costs (Exhibit 3). Purely domestic companies would be unaffected.

Exhibit 3: Illustration of border adjustment treatment of US corporate taxation



Source: BofA Merrill Lynch US Equity & US Quant Strategy

Even if border adjustments are enacted, there is significant uncertainty around implementation details. For this analysis, we focus on the first order impact of border adjustments, but we recognize there would be significant second order impacts on the pricing of products, pricing within the supply chain, foreign exchange rates as well as foreign policy reactions. (We discuss many of these second order impacts later in this report.) For the current exercise, we also ignored the cost of services as the implementation of these rules would be more complicated. See the Methodology section for more details.

We estimate that at a 20% tax rate, border adjustments would detract $5-6 from 2018 EPS, with nearly 80% of the drag coming from the Consumer Discretionary and Consumer Staples sectors (roughly evenly split). This impact includes a 50% haircut to account for offsets from alternate sourcing, currency rates and pricing power. On one hand, we may be drastically underestimating the impact because we have not included the second order impacts on the supply chain. For example, many retailers source the bulk of their goods from domestic suppliers, who source their goods from overseas suppliers. So while the original retailer may not feel the direct tax hit from importing goods, the supplier that took the tax hit would likely pass along a significant portion of this via a higher cost. On the other hand, the supplier or the retailer could look for alternate domestic sources for those products, but it would largely depend on whether the cost differential of production between the US and overseas exceeded the border adjustment tax. Some key components in determining the cost differential are the foreign exchange rates (more on this below) and labor costs. In the end, the net impact of the border adjustment taxes will be driven by a complex interplay between corporate tax rates, pricing power, foreign exchange moves, foreign versus domestic availability and cost differentials.

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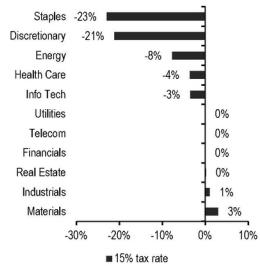
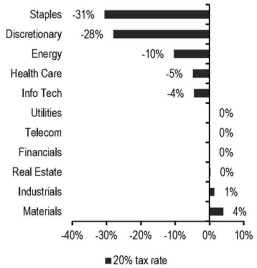
Chart 10: Sector EPS impact from border adjustment tax (15% rate)



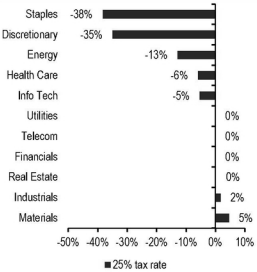
Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 11: Sector EPS impact from border adjustment tax (20% rate)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 12: Sector EPS impact from border adjustment tax (25% rate)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Offsetting BAT with a little math and some price increases

A company could fully offset the border adjustment tax by raising prices such that the after-tax increase in sales would exceed the drag from the lost deduction of costs. All else equal, the break-even price increase would be equivalent to the cost of goods sold as a % of sales multiplied by net % imported and the tax to after-tax ratio, which at a 20% rate is 0.25 (20%/80%).

$$BAT\ price\ offset = COGS\ (\%\ of\ sales) * net\ import\ (\%) * \frac{tax\ rate\ (\%)}{(1 - tax\ rate\ (\%))}$$

As an example, a company with a 25% gross margin that imports 30% of its goods would need to increase its prices by of 5-6% to offset the border adjustment tax, all else equal.

Offsetting BAT with FX

Some of the increase in the after-tax cost of imported goods can also be offset by a strengthening dollar. For example, companies producing goods in Mexico, which stand to see a 25% increase in the cost of imported goods, should see the cost increase partially offset by the 13% devaluation of the Mexican Peso against the US dollar since the election. The net cost increase is a more digestible 9%, especially when you also consider that the Peso has devalued nearly 30% since its 2013 peak. While it may offer little consolation to corporates, the US Dollar Index is up over 25% since mid-2014, so the border adjustment tax would presumably act as a reversal of the lowered cost of overseas production over that period.

Border adjustment sensitivity analysis

The table below illustrates how the change in the tax rate and the application of the border adjustment tax would impact the domestic earnings of a hypothetical company with sensitivity to different tax rates and net export assumptions. We assumed the company has a 40% gross margin, operating expenses are 20% of sales and an initial tax rate of 35%. As you would expect, the biggest benefit would accrue to companies with significant net exports at a high domestic tax rate (bigger tax shield) and the most negative impact to significant net imports at a high domestic tax rate (higher taxes on higher taxable income).

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Table 15: Sensitivity of a company's domestic earnings

	Net exports (% of COGS)				
Tax rate	**-100%**	**-50%**	**0%**	**50%**	**100%***
15%	-38%	-4%	31%	65%	100%
18%	-54%	-13%	27%	67%	108%
20%	-69%	-23%	23%	69%	115%
23%	-85%	-33%	19%	71%	123%
25%	-100%	-42%	15%	73%	131%
28%	-115%	-52%	12%	75%	138%
30%	-131%	-62%	8%	77%	146%
33%	-146%	-71%	4%	79%	154%
35%	-162%	-81%	0%	81%	162%

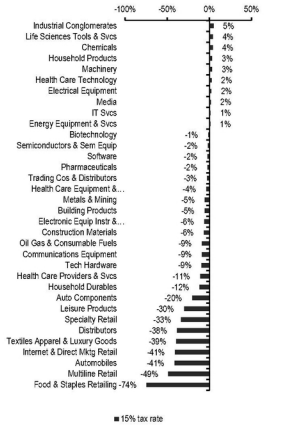
Source: BofAML US Equity & Quant Strategy

*We note that it is unlikely that a company can be a 100% net exporter and have any domestic earnings to begin with.

Note: We assume a company with a 40% gross margin, operating expenses are 20% of sales and an initial tax rate of 35%

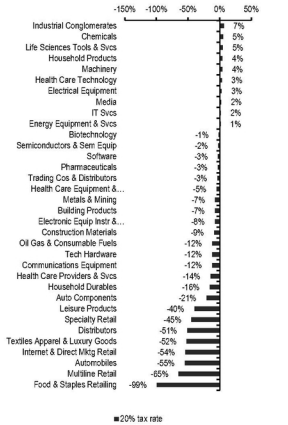
Industry screen: Below we highlight industries which could potentially benefit most / be hurt most by the BAT.

Chart 13: Industry EPS impact from border adjustment tax (15% rate)



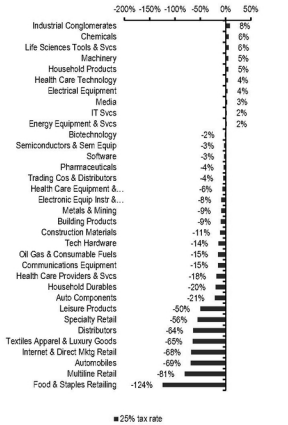
Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 14: Industry EPS impact from border adjustment tax (20% rate)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 15: Industry EPS impact from border adjustment tax (25% rate)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Closing loopholes

Both Trump and the Blueprint proposal suggest getting rid of special-interest deductions and credits that distort capital allocation decisions. The table below lists the 25 biggest US corporate tax breaks. The #1 and #3 "tax breaks" are the deferral of foreign income and certain foreign financial income, but these would become irrelevant if the US moves to a territorial tax system, as is being proposed by the Blueprint plan. Exempting corporations from paying US taxes on foreign income would put the US in

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line with the rest of the world on this issue. Similarly, the accelerated depreciation of machinery & equipment would become irrelevant due to the move toward taxation based on business cash flow and the immediate write-off of capital expenditures. Once the depreciation from legacy investments has run off, then depreciation should become irrelevant for tax purposes. We also highlight the deduction for US production activities (section 199) due to it being specifically highlighted by the Blueprint proposal as no longer being necessary under the new tax policies. Both the Blueprint and Trump have noted that they would likely maintain the Research & Development related tax credits.

Table 16: Top 25 US corporate tax breaks (2016)

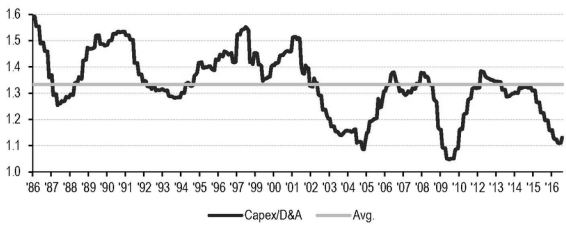
Government tax expense	Category/Industry	2016 ($mn)
Deferral of income from controlled foreign corporations	International affairs	102,100
Accelerated depreciation of machinery & equipment	Commerce	28,570
Deferred taxes for financial firms on certain income earned overseas	International affairs	15,320
Deduction for US production activities	Commerce	12,080
Credit for increasing research activities	General science, space, and technology	9,580
Exclusion of interest on public purpose State & local bonds	General purpose fiscal assistance	8,400
Credit for low-income housing investments	Housing	8,200
Expensing of research & experimentation expenditures	General science, space, and technology	6,350
Deferral of gains from like-kind exchanges	Commerce	5,720
Inventory property sales source rules exception	International affairs	4,270
Graduated corporation income tax rate	Commerce	3,300
Exemption of credit union income	Financial institutions and insurance	2,310
Special ESOP rules	Income security	1,910
Deductibility of charitable contributions, other than education & health	Training, employment, and social services	1,720
Tax credit for orphan drug research	Health	1,700
Exclusion & deferral of policyholder income earned on life insurance & annuity contracts	Financial institutions and insurance	1,470
New markets tax credit	Community and regional development	1,260
Energy production credit	Energy	1,050
Exclusion of interest on hospital construction bonds	Health	1,010
Energy investment credit	Energy	890
Work opportunity tax credit	Training, employment, and social services	830
Deductibility of charitable contributions (education)	Education	820
Tax exemption of insurance income earned by tax-exempt organizations	Financial institutions and insurance	690
Exclusion of interest on bonds for private nonprofit educational facilities	Education	660
Special Blue Cross/Blue Shield tax benefits	Health	630

Source: BofAML US Equity & Quant Strategy, US Department of Treasury

Immediate capex expensing should provide some initial cash tax benefits

The shift to the immediate expensing of capital expenditures should provide a significant near-term reduction in cash taxes as companies benefit from the ongoing reduction of taxable income from the depreciation of legacy assets combined with the full expensing of new investments. As the depreciation of legacy assets rolls off, the tax benefit would become more modest. Keep in mind that, for tax reporting, many companies already take advantage of the accelerated depreciation schedules discussed above. The ongoing benefit of capex expensing derives from the deferral in the timing of tax payments.

Chart 16: S&P 500 capital expenditure to depreciation & amortization ratio



Source: BofAML US Equity & Quant Strategy, S&P, Compustat

Bank of America Merrill Lynch

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No interest tax shield

Another key offset to the lower corporate tax rate is the proposed ending of the deduction of net interest expense. We assume that this rule would apply to new debt and that existing debt would be grandfathered. This tax shield removal would increase the cost of debt by an incremental 25% (not to mention the 100bp+ rise in long-term interest rates seen since the summer of 2016). In the table below, we illustrate the impact on S&P 500 corporate profits. We estimate that over time, the removal of the interest rate deduction would detract about 4%, or $4-5 from S&P 500 2018 EPS, although the initial impact would be less significant given 70-90% of the debt is long term.

Table 17: Estimated EPS impact from the removal of interest tax shield

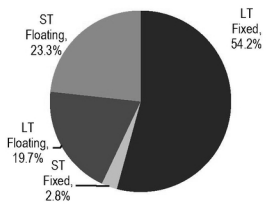
S&P 500 Non-Financials	
Net Debt ($mn)	2,899
Net Debt/EBITDA	1.74
New tax rate	20%
After-tax interest rate [interest rate w/ no tax shield * (1 - new tax rate)]	4.2%
Interest rate w/ no tax shield [interest expense / net debt]	5.2%
Change in cost of debt [(interest rate w/ no tax shield / after-tax interest rate) -1]	25%
Potential profit impact (%) [(interest rate w/) no tax shield - after-tax interest rate) * (net debt / net income)]	4%
Potential impact on 2018 EPS	**$4-5**

Source: BofAML US Equity & US Quant Strategy, S&P, FactSet

Many investors assume that interest deductions would likely apply only to new debt, and if this were the case, the drag would be gradual for the overall S&P 500 as debt matures and is refinanced. Companies have shifted the composition of their debt toward longer maturities and fixed rates. We estimate an average S&P 500 debt maturity of over eight years, with just one-third maturing within the next three years. The grandfathering of existing debt is a reasonable assumption, but not a sure thing, in our view. There is a possibility that legislators apply it to all debt on the grounds that most companies are expected to be net beneficiaries of comprehensive tax reform.

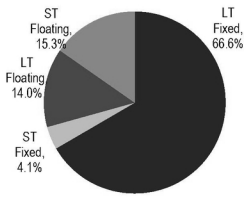
There is also a possibility that this policy is phased in over a number of years, with certain portions of the existing debt losing their interest deductibility over time.

Chart 17: Russell 1000 debt by type and maturity - 2007



Source: FactSet, BofAML US Equity & US Quant Strategy

Chart 18: Russell 1000 debt by type and maturity - October 2016



Source: FactSet, BofAML US Equity & US Quant Strategy

Table 18: Russell 1000 estimated weighted average debt maturity (ex-Financials & REITs)

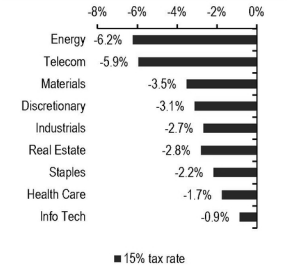
Sector	Estimated Wtd Avg Maturity (years)
Cons. Disc.	7.0
Cons. Staples	8.1
Energy	8.4
Health Care	8.0
Industrials	8.0
Materials	7.4
Technology	7.4
Telecom	10.8
Utilities	12.0
Total	**8.3**

Source: FactSet, BofAML US Equity & US Quant Strategy

The most negatively impacted companies would clearly be the ones with the most leverage, in addition to those with depressed earnings (Metals & Mining, Energy, etc.). While the Utilities sector has a lot of leverage, there would likely be a pass through to customers in determining their allowed rate increase.

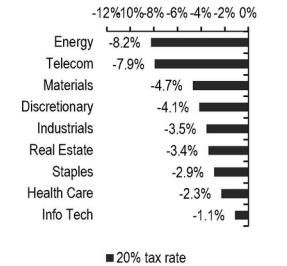
HOUSE_OVERSIGHT_023085

Chart 19: Sector EPS impact from ending interest deductibility (15% rate; ex- fin, utes)



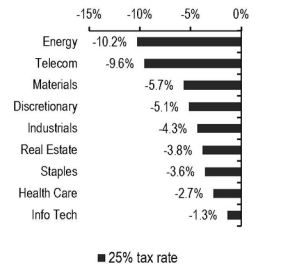
Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 20: Sector EPS impact from ending interest deductibility (20% rate; ex- fin, utes)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

Chart 21: Sector EPS impact from ending interest deductibility (25% rate; ex- fin, utes)



Source: BofAML US Equity & Quant Strategy, FactSet, S&P

How will levered companies react?

Companies will likely grow comfortable with a smaller amount of debt, retain more earnings, use less cash for dividends and share buybacks, and potentially draw down cash if they have it. If a tax holiday is also granted, that might offset the loss of benefit. Companies that regularly issue long-term debt may choose to reduce that burden to offset the tax change, and find those funds elsewhere. We find it unlikely that the change would result in a surge in equity issuance, unless the change applies to existing debt, which is unlikely in our view. While this change should be taken as a line item in a wholistic bill, there are victims and beneficiaries here. Corporations that have high leverage ratios, low retained earnings, high interest expense to earnings ratios, no cash overseas offset from repatriation, and those that have recurring long-term debt needs may be most at risk.

Other implications

While some argue that companies will try to raise outsized amounts of investment grade capital ahead of the deadline to lock in funding with the tax benefit before the loophole is closed, there is a reasonable chance that a provision is included in the legislation that would treat such debt as new debt. In our Investment Grade Strategist Hans Mikkelsen's view, demand for IG credit could be materially reduced over time. The tax change could also dampen Leverage Buyout (LBO) activity, according to our High Yield strategist Michael Contopoulos, where these funds are already struggling to generate high returns – note that LBO funds are currently sitting on close to $1tn in cash looking for a home, according to Preqin's third quarter update.

Who could be hurt: See Table 21 for a screen of stocks with high net interest expense as a percentage of net income which could potentially be hurt most by an end to the deductibility of interest expense.

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Tax reform screens

Lower US corporate tax rate: potential beneficiaries

Below we provide a screen of domestically-oriented S&P 500 companies (<10% foreign sales exposure) with a high (>35%) median 5-year effective tax rate which could potentially benefit most from a lower US corporate tax rate.

Table 19: S&P 500 companies with high (>35%) median 5-year effective tax rates and low (<10%) foreign sales

Ticker	Company Name	Sector	Industry	Foreign Sales %	5-Year Median Effective Tax Rate %
CHTR	Charter Communications, Inc. Class A	Consumer Discretionary	Media	0%	445.3
DVN	Devon Energy Corporation	Energy	Oil Gas & Consumable Fuels	8%	58.3
REGN	Regeneron Pharmaceuticals, Inc.	Health Care	Biotechnology	0%	44.3
COG	Cabot Oil & Gas Corporation	Energy	Oil Gas & Consumable Fuels	0%	43.5
EOG	EOG Resources, Inc.	Energy	Oil Gas & Consumable Fuels	5%	42.3
RRC	Range Resources Corporation	Energy	Oil Gas & Consumable Fuels	0%	41.9
CNC	Centene Corporation	Health Care	Health Care Providers & Services	0%	41.4
ABC	AmerisourceBergen Corporation	Health Care	Health Care Providers & Services	0%	40.2
CNP	CenterPoint Energy, Inc.	Utilities	Multi-Utilities	0%	39.7
AWK	American Water Works Company, Inc.	Utilities	Water Utilities	0%	39.4
SWN	Southwestern Energy Company	Energy	Oil Gas & Consumable Fuels	0%	39.3
CVS	CVS Health Corporation	Consumer Staples	Food & Staples Retailing	0%	39.3
WFM	Whole Foods Market, Inc.	Consumer Staples	Food & Staples Retailing	3%	38.7
CMG	Chipotle Mexican Grill, Inc.	Consumer Discretionary	Hotels Restaurants & Leisure	1%	38.5
JWN	Nordstrom, Inc.	Consumer Discretionary	Multiline Retail	0%	38.5
AN	AutoNation, Inc.	Consumer Discretionary	Specialty Retail	0%	38.5
TROW	T. Rowe Price Group	Financials	Capital Markets	0%	38.4
KMX	CarMax, Inc.	Consumer Discretionary	Specialty Retail	0%	38.2
PEG	Public Service Enterprise Group Inc	Utilities	Multi-Utilities	0%	38.2
JBHT	J.B. Hunt Transport Services, Inc.	Industrials	Road & Rail	0%	38.1
ULTA	Ulta Salon, Cosmetics & Fragrance, Inc.	Consumer Discretionary	Specialty Retail	0%	38.1
CHK	Chesapeake Energy Corporation	Energy	Oil Gas & Consumable Fuels	0%	38.0
AEE	Ameren Corporation	Utilities	Multi-Utilities	0%	37.9
ALK	Alaska Air Group, Inc.	Industrials	Airlines	0%	37.9
CTL	CenturyLink, Inc.	Telecommunication Services	Diversified Telecommunication Services	0%	37.8
UNP	Union Pacific Corporation	Industrials	Road & Rail	0%	37.7
ROST	Ross Stores, Inc.	Consumer Discretionary	Specialty Retail	0%	37.7
LOW	Lowe's Companies, Inc.	Consumer Discretionary	Specialty Retail	8%	37.6
BBY	Best Buy Co., Inc.	Consumer Discretionary	Specialty Retail	8%	37.5
AAP	Advance Auto Parts, Inc.	Consumer Discretionary	Specialty Retail	0%	37.5
LUV	Southwest Airlines Co.	Industrials	Airlines	0%	37.4
SYF	Synchrony Financial	Financials	Consumer Finance	0%	37.2
DLTR	Dollar Tree, Inc.	Consumer Discretionary	Multiline Retail	8%	37.2
SCHW	Charles Schwab Corporation	Financials	Capital Markets	0%	37.2
NAVI	Navient Corp	Financials	Consumer Finance	0%	37.2
CAH	Cardinal Health, Inc.	Health Care	Health Care Providers & Services	4%	37.1
CXO	Concho Resources Inc.	Energy	Oil Gas & Consumable Fuels	0%	37.1
DFS	Discover Financial Services	Financials	Consumer Finance	0%	37.1
DGX	Quest Diagnostics Incorporated	Health Care	Health Care Providers & Services	2%	37.1
CSRA	CSRA, Inc.	Information Technology	IT Services	0%	37.1
DG	Dollar General Corporation	Consumer Discretionary	Multiline Retail	0%	37.0
XEC	Cimarex Energy Co.	Energy	Oil Gas & Consumable Fuels	0%	37.0
WEC	WEC Energy Group Inc	Utilities	Multi-Utilities	0%	36.9
CSX	CSX Corporation	Industrials	Road & Rail	0%	36.9
CTAS	Cintas Corporation	Industrials	Commercial Services & Supplies	9%	36.9
ORLY	O'Reilly Automotive, Inc.	Consumer Discretionary	Specialty Retail	0%	36.7
KSS	Kohl's Corporation	Consumer Discretionary	Multiline Retail	0%	36.7
BBBY	Bed Bath & Beyond Inc.	Consumer Discretionary	Specialty Retail	0%	36.6
TSCO	Tractor Supply Company	Consumer Discretionary	Specialty Retail	0%	36.6
HUM	Humana Inc.	Health Care	Health Care Providers & Services	0%	36.5
TSO	Tesoro Corporation	Energy	Oil Gas & Consumable Fuels	0%	36.5
ESRX	Express Scripts Holding Company	Health Care	Health Care Providers & Services	0%	36.4
HD	Home Depot, Inc.	Consumer Discretionary	Specialty Retail	9%	36.4
CME	CME Group Inc. Class A	Financials	Capital Markets	0%	36.4
UNH	UnitedHealth Group Incorporated	Health Care	Health Care Providers & Services	4%	36.4
PAYX	Paychex, Inc.	Information Technology	IT Services	1%	36.3
NSC	Norfolk Southern Corporation	Industrials	Road & Rail	0%	36.2
M	Macy's Inc	Consumer Discretionary	Multiline Retail	0%	36.2
RAI	Reynolds American Inc.	Consumer Staples	Tobacco	5%	36.1
CMCSA	Comcast Corporation Class A	Consumer Discretionary	Media	8%	35.8
AZO	AutoZone, Inc.	Consumer Discretionary	Specialty Retail	6%	35.7
UHS	Universal Health Services, Inc. Class B	Health Care	Health Care Providers & Services	0%	35.5
AET	Aetna Inc.	Health Care	Health Care Providers & Services	2%	35.5
DVA	DaVita Inc.	Health Care	Health Care Providers & Services	0%	35.4

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Table 19: S&P 500 companies with high (>35%) median 5-year effective tax rates and low (<10%) foreign sales

Ticker	Company Name	Sector	Industry	Foreign Sales %	5-Year Median Effective Tax Rate %
FE	FirstEnergy Corp.	Utilities	Electric Utilities	0%	35.3
ZION	Zions Bancorporation	Financials	Banks	0%	35.2
MO	Altria Group, Inc.	Consumer Staples	Tobacco	0%	35.1
EXC	Exelon Corporation	Utilities	Electric Utilities	0%	35.1
RSG	Republic Services, Inc.	Industrials	Commercial Services & Supplies	0%	35.0

Note: This screen is not a recommended list either individually or as a group of stocks. Investors should consider the fundamentals of the companies and their own individual circumstances/objective before making any investment decisions.

Source: FactSet, BofA Merrill Lynch US Equity & US Quant Strategy

Repatriation: potential beneficiaries

Below we provide a screen of S&P 500 companies (excluding Financials and Real Estate) with high (>10%) overseas cash as a percent of market cap, which could potentially benefit most from repatriation.

Table 20: S&P 500 (ex. Financials & Real Estate) companies with the highest overseas cash* as a % of their market cap (>10%)

Ticker	Company	Sector	Industry	Overseas Cash ($mn)	Overseas Cash as a % of Mkt Cap
WU	Western Union Company	Information Technology	IT Services	6,100	62%
FSLR	First Solar, Inc.	Information Technology	Semiconductors & Semiconductor	1,500	59%
NWS	News Corporation Class B	Consumer Discretionary	Media	813	54%
ORCL	Oracle Corporation	Information Technology	Software	48,200	40%
CSCO	Cisco Systems, Inc.	Information Technology	Communications Equipment	59,800	39%
NTAP	NetApp, Inc.	Information Technology	Technology Hardware, Storage &	4,000	39%
QCOM	QUALCOMM Incorporated	Information Technology	Semiconductors & Semiconductor	29,600	36%
AAPL	Apple Inc.	Information Technology	Technology Hardware, Storage &	216,000	34%
JNPR	Juniper Networks, Inc.	Information Technology	Communications Equipment	3,167	30%
SYMC	Symantec Corporation	Information Technology	Software	4,900	29%
PVH	PVH Corp.	Consumer Discretionary	Textiles, Apparel & Luxury Goo	2,100	28%
AMGN	Amgen Inc.	Health Care	Biotechnology	29,000	26%
GE	General Electric Company	Industrials	Industrial Conglomerates	64,680	24%
MSFT	Microsoft Corporation	Information Technology	Software	108,900	22%
TDC	Teradata Corporation	Information Technology	IT Services	819	22%
CTSH	Cognizant Technology Solutions Corp. Class A	Information Technology	IT Services	7,495	22%
RL	Ralph Lauren Corporation Class A	Consumer Discretionary	Textiles, Apparel & Luxury Goo	1,085	21%
CA	CA, Inc.	Information Technology	Software	2,137	21%
WAT	Waters Corporation	Health Care	Life Sciences Tools & Services	2,346	20%
LRCX	Lam Research Corporation	Information Technology	Semiconductors & Semiconductor	3,500	19%
NWSA	News Corporation Class A	Consumer Discretionary	Media	813	18%
GOOG	Alphabet Inc. Class C	Information Technology	Internet Software & Services	42,900	18%
MCHP	Microchip Technology Incorporated	Information Technology	Semiconductors & Semiconductor	2,559	17%
GOOGL	Alphabet Inc. Class A	Information Technology	Internet Software & Services	42,900	17%
GILD	Gilead Sciences, Inc.	Health Care	Biotechnology	15,700	17%
VRSN	VeriSign, Inc.	Information Technology	Internet Software & Services	1,200	16%
PBI	Pitney Bowes Inc.	Industrials	Commercial Services & Supplies	470	16%
XLNX	Xilinx, Inc.	Information Technology	Semiconductors & Semiconductor	2,240	15%
ADI	Analog Devices, Inc.	Information Technology	Semiconductors & Semiconductor	3,374	15%
A	Agilent Technologies, Inc.	Health Care	Life Sciences Tools & Services	2,181	14%
NOV	National Oilwell Varco, Inc.	Energy	Energy Equipment & Services	2,034	14%
CTXS	Citrix Systems, Inc.	Information Technology	Software	1,970	13%
KLAC	KLA-Tencor Corporation	Information Technology	Semiconductors & Semiconductor	1,730	13%
GPS	Gap, Inc.	Consumer Discretionary	Specialty Retail	685	13%
WDC	Western Digital Corporation	Information Technology	Technology Hardware, Storage &	2,800	13%
GT	Goodyear Tire & Rubber Company	Consumer Discretionary	Auto Components	1,042	13%
ADSK	Autodesk, Inc.	Information Technology	Software	2,059	13%
PCLN	Priceline Group Inc	Consumer Discretionary	Internet & Direct Marketing Re	9,800	13%
JNJ	Johnson & Johnson	Health Care	Pharmaceuticals	38,200	13%
MRK	Merck & Co., Inc.	Health Care	Pharmaceuticals	20,995	12%
GLW	Corning Inc	Information Technology	Electronic Equip., Instruments	3,085	12%
MJN	Mead Johnson Nutrition Company	Consumer Staples	Food Products	1,577	11%
LLY	Eli Lilly and Company	Health Care	Pharmaceuticals	8,100	11%
KO	Coca-Cola Company	Consumer Staples	Beverages	17,900	11%
MOS	Mosaic Company	Materials	Chemicals	1,276	11%
AMAT	Applied Materials, Inc.	Information Technology	Semiconductors & Semiconductor	4,000	11%
PH	Parker-Hannifin Corporation	Industrials	Machinery	2,065	11%

*For some companies, total overseas cash may represent total accumulated overseas profits. Overseas cash based on BofAML analyst estimates or Bloomberg data from company disclosures.

Note: This screen is not a recommended list either individually or as a group of stocks. Investors should consider the fundamentals of the companies and their own individual circumstances/objective before making any investment decisions.

Source: FactSet, Bloomberg, BofA Merrill Lynch Global research estimates, BofA Merrill Lynch US Equity & US Quant Strategy

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End of interest deductibility: who could be hurt?

Below we provide a screen of the top 50 S&P 500 companies (excluding Financials, Real Estate and Utilities) by high net interest expense as a percentage of net income, which could potentially be hurt by an end to the deductibility of interest expense.

Table 21: S&P 500 (ex. Financials, Real Estate & Utilities) with high net interest expense as a % of net income

Ticker	Company	Sector	Industry	Net Interest Expense (% of L12M Net Income)
CHTR	Charter Communications, Inc. Class A	Consumer Discretionary	Media	1387%
DVN	Devon Energy Corporation	Energy	Oil, Gas & Consumable Fuels	467%
CXO	Concho Resources Inc.	Energy	Oil, Gas & Consumable Fuels	357%
MU	Micron Technology, Inc.	Information Technology	Semiconductors & Semiconductor	316%
FCX	Freeport-McMoRan, Inc.	Materials	Metals & Mining	280%
OKE	ONEOK, Inc.	Energy	Oil, Gas & Consumable Fuels	135%
KMI	Kinder Morgan Inc Class P	Energy	Oil, Gas & Consumable Fuels	120%
LVLT	Level 3 Communications, Inc.	Telecommunication Services	Diversified Telecommunication	96%
WYNN	Wynn Resorts, Limited	Consumer Discretionary	Hotels Restaurants & Leisure	95%
CTL	CenturyLink, Inc.	Telecommunication Services	Diversified Telecommunication	94%
CF	CF Industries Holdings, Inc.	Materials	Chemicals	92%
NFX	Newfield Exploration Company	Energy	Oil, Gas & Consumable Fuels	82%
RIG	Transocean Ltd.	Energy	Energy Equipment & Services	81%
NFLX	Netflix, Inc.	Consumer Discretionary	Internet & Direct Marketing Re	80%
SE	Spectra Energy Corp	Energy	Oil, Gas & Consumable Fuels	78%
TDG	TransDigm Group Incorporated	Industrials	Aerospace & Defense	77%
HCA	HCA Holdings, Inc.	Health Care	Health Care Providers & Servic	63%
MPC	Marathon Petroleum Corporation	Energy	Oil, Gas & Consumable Fuels	56%
CAT	Caterpillar Inc.	Industrials	Machinery	56%
EVHC	Envision Healthcare Corp.	Health Care	Health Care Providers & Servic	55%
URI	United Rentals, Inc.	Industrials	Trading Companies & Distributo	54%
DVA	DaVita Inc.	Health Care	Health Care Providers & Servic	52%
TGNA	TEGNA, Inc.	Consumer Discretionary	Media	52%
DE	Deere & Company	Industrials	Machinery	50%
MAS	Masco Corporation	Industrials	Building Products	49%
ENDP	Endo International Plc	Health Care	Pharmaceuticals	48%
COTY	Coty Inc. Class A	Consumer Staples	Personal Products	47%
IP	International Paper Company	Materials	Containers & Packaging	47%
R	Ryder System, Inc.	Industrials	Road & Rail	46%
DLTR	Dollar Tree, Inc.	Consumer Discretionary	Multiline Retail	46%
NEM	Newmont Mining Corporation	Materials	Metals & Mining	46%
FOX	Twenty-First Century Fox, Inc. Class B	Consumer Discretionary	Media	46%
GT	Goodyear Tire & Rubber Company	Consumer Discretionary	Auto Components	45%
RSG	Republic Services, Inc.	Industrials	Commercial Services & Supplies	45%
SEE	Sealed Air Corporation	Materials	Containers & Packaging	45%
PBI	Pitney Bowes Inc.	Industrials	Commercial Services & Supplies	45%
AN	AutoNation, Inc.	Consumer Discretionary	Specialty Retail	44%
KSS	Kohl's Corporation	Consumer Discretionary	Multiline Retail	44%
F	Ford Motor Company	Consumer Discretionary	Automobiles	43%
VIAB	Viacom Inc. Class B	Consumer Discretionary	Media	42%
MNK	Mallinckrodt Plc	Health Care	Pharmaceuticals	41%
ADS	Alliance Data Systems Corporation	Information Technology	IT Services	41%
WRK	WestRock Co.	Materials	Containers & Packaging	40%
VRTX	Vertex Pharmaceuticals Incorporated	Health Care	Biotechnology	39%
BLL	Ball Corporation	Materials	Containers & Packaging	37%
GE	General Electric Company	Industrials	Industrial Conglomerates	37%
M	Macy's Inc	Consumer Discretionary	Multiline Retail	37%
CVX	Chevron Corporation	Energy	Oil, Gas & Consumable Fuels	37%
SLB	Schlumberger NV	Energy	Energy Equipment & Services	37%
TSO	Tesoro Corporation	Energy	Oil, Gas & Consumable Fuels	36%

Note: This screen is not a recommended list either individually or as a group of stocks. Investors should consider the fundamentals of the companies and their own individual circumstances/objective before making any investment decisions.

Source: FactSet, BofaA Merrill Lynch US Equity & US Quant Strategy

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Related BofAML research on US tax reform

Below we provide links to reports from our BofAML Global Research colleagues that address this topic.

Economics:
Global Watch: Will border adjustment lead to border battles? 18 January 2017

US Economic Weekly: Cutting taxes could be taxing 02 December 2016

Credit strategy:
Situation Room: Corporate tax reform=less debt 28 November 2016

The HY Wire: 'A Better Way': tax proposals could affect HY issuance 09 December 2016

FX:
FX Watch: Ten thoughts on Border Adjustments 18 January 2017

FX Viewpoint: Homeland Investment redux? 17 October 2016

Autos:
Automotive Industry: The Trump trade – implications for the automotive value chain 18 January 2017

Consumer/Retail:
Retailing - Hardlines: A taxing set of proposals for Hardline Retailers 14 December 2016

Specialty Retail and Department Stores: Border adjustment seems unlikely but would decimate retail earnings 14 December 2016

US Consumer Staples: Policy changes: what to watch for 18 January 2017

Cosmetics, Household & Personal Care: 2017 – The Year Ahead: a few diamonds in the rough 10 January 2017

Consumer Staples: 2017 - the year ahead: sector rotation puts fundamentals in focus 13 December 2016

Tobacco: Tobacco Year Ahead 2017: see domestic players having more upside potential this yr 04 January 2017

Homebuilders and Building Products: State of the union 12 December 2016

Financials / Real Estate:
2017 Banks Year Ahead: T-R-U-M-P: Find out what it means for "E" (20% potential upside) 10 January 2017

US Banks Chart of the Week: Muni exposure will mute benefit from lower corporate taxes 11 December 2016

Insurance: Tax changes could have mixed implications 18 January 2017

Brokers, Asset Managers & Exchanges: 2017 Year Ahead: An attractive outlook, with 12-20%+ upside, with catalysts 12 January 2017

U.S. REITs: Regulatory changes are coming: A REIT analyst guidebook 17 January 2017

Health Care:
Managed Care: MCO rally has just begun; beneficiaries of the non-Health Care upside from Trump 02 December 2016

Biotechnology: On the road to recovery 04 January 2017

Healthcare: 2017 – the year ahead: the only constant is change 15 December 2016

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Energy:
Refiners: What's going on with Refining in 2017: potential benefits in a Trump administration 05 January 2017

Industrials / Materials:
Industrials/Multi-Industry: DEM#217: The Year Ahead; Resetting for higher US growth and inflation 09 January 2017

Engineering & Construction: 2017 view: energy backlog more 2H story, own infrastructure & federal 12 January 2017

Transportation - Railroads: 2017 Rail Year Ahead: Macro factors favor group; 1H comps set stage for growth 12 January 2017

Business, Education & Professional Services: 2017 year ahead: INFO top pick in Business Services 12 January 2017

Basic Materials & Industrials 2017 Year Ahead: Buy America and inflation, but watch the US dollar and interest rates 12 December 2016

Global Chemicals: Potential tax reform could be more meaningful than infrastructure spending 15 December 2016

Tech:
Apple Inc.: Deep Dive - Benefit from lower U.S. tax rate, but border tax could be onerous 13 January 2017

Server & Enterprise Software: Tax reform +ve for INTU, CRM; Cash repatriation +ve for ORCL, MSFT, VMW 12 December 2016

Semiconductor Capital Equipment: Tax sensitivity analysis. Repatriation a bigger deal than taxes for Semicaps, EDA 02 December 2016

Telecom Equipment: New administration appears likely to drive spending on infrastructure & cyber security 18 January 2017

Internet/e-Commerce: Top 2017 US Internet Sector Drivers – Trump Act One 17 January 2017

Telecom:
Wireline & Wireless Telecom Services: For AT&T, Verizon and CenturyLink, the telco tax trade could be 'Huge' 19 December 2016

Wireline & Wireless Telecom Services: 2017 Year Ahead – Fiscal forces, regulation, and video migration to mobile 10 January 2017

Media:
Media & Entertainment: 2017 year ahead - living the stream 11 January 2017

Cable/Satellite: 2017 year ahead – reform, relief and resilience 11 January 2017

Utilities:
Utilities: 2017 Year Ahead: Washington DC will likely cast a long shadow on utilities 06 January 2017

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Methodology

Repatriation impact

We estimated cumulative overseas profits for the S&P 500 excluding Financials and Real Estate via three sources: 1) Bloomberg data on cash held overseas (if disclosed/available), 2) BofAML analyst estimates on cumulative overseas profits or cash, and 3) our own estimate if neither (1) or (2) are available, based on (Total cash x [% of foreign sales +10%]) for companies with at least 5% foreign sales.

We apply the effective tax rates proposed by Trump (10%) and the Blueprint (8.75%) to our estimated $1.2tn in overseas cash to determine taxes due for the S&P 500 ex. Financials & Real Estate. We estimate that 100% is brought back given that the tax is mandatory. To compute the one-time tax impact to GAAP EPS, we divide the cumulative tax impact by the S&P 500 divisor, after first excluding the impact from several large multinationals (e.g. AAPL) which already provision a portion of their overseas profits for US taxes and have effective US tax rates well above 35%.

Note that for companies for which our analysts provided estimates, we asked them to provide cumulative overseas profits if possible, but in most cases this number reflects overseas cash. Thus, taxes paid could be slightly higher than we estimate given that both the Blueprint and Trump's plans suggest a mandatory tax on all accumulated overseas profits, some of which may be permanently reinvested; here, the Blueprint suggests a lower 3.5% tax for retained earnings not held in cash/equivalents, suggesting that any additional taxes payable that we are not capturing are likely to be small.

To calculate the % EPS impact from buybacks, we subtract the amount of taxes payable from total cash brought back for the S&P 500 ex. Financials & Real Estate (and for each sector) and divide this by the market cap for the S&P 500 (and for each sector.) We multiply this % impact for the overall index by our 2018E EPS of $137 to determine the potential EPS impact, applying various buyback scenarios (10-100%). We use 50% as a base case scenario, which is lower than the 80% brought back during the 2004 tax holiday, to be conservative.

Border adjustments impact on EPS

We estimate the costs of goods imported and exported for each company using the latest company filings, conversations with analysts, industry research, management commentary and the Input-Output accounts data published by the U.S. Department of Commerce. For more information about the Input-Output accounts data, please refer to the Bureau of Economic Analysis website at http://www.bea.gov/industry/io_annual.htm.

When using the estimates based on Input-Output accounts, we adjust them to account for the varying foreign exposures of different S&P 500 industries. For companies that source products through importers (e.g. retailers), we only included the costs of goods estimated to be directly imported by each company, as taxes pertaining to those imported goods should be paid by the importers themselves.

We estimate the earnings impact of border adjustments based on the additional taxes that companies would pay on the costs of imported goods sold in the US (non-deductible) and any reduction in taxes related to the production costs for exported goods (deductible). To calculate this, we multiple the net value of imported COGS by the assumed tax rate. Note that the net impact can be either positive or negative depending on whether the company is a net importer or exporter. We assume a 50% haircut to the impact to account for from alternate sourcing, currency rates and pricing power.

Lower corporate tax rate impact on EPS

We estimate the normalized effective domestic tax rate of a company based on conversations with the analysts or the median 5-year domestic income tax rate. If a company had a negative tax rate for a particular year, we exclude the tax rate of that

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year from the median calculation. For companies with normalized tax rates of more than 75%, we assume 35%.

The impact of a lower corporate tax rate on company earnings is directly proportional to the difference between the current domestic tax rate and the proposed tax rate. The impact is calculated by taking the difference between the current tax rate and the proposed tax rate, and dividing it by (1-current tax rate).

To calculate the impact of a lower corporate tax rate on the S&P 500 earnings, we can divide the change in the effective tax rate by (1 – the current effective tax rate).

Interest deductibility impact

We estimate the cost associated with the removal of the net interest expense deduction from taxable income by multiplying the net interest expense by the tax rate.

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Jeffrey Epstein: Educational Programs

Cuts to public funding for education means that many programs need to find support and funding from private donors. The **Jeffrey Epstein** VI Foundation is proud to provide needed funding to worthy educational programs and schools across the country. While the initial focus of the Foundation was science education , it has since widened its scope and now provides funding to a wide range of educational programs in other fields.

Bard Early College Program

The Bard High School Early College program consists of three public high schools, one in Manhattan, one in Queens and one in Newark, NJ. The schools have been cited by President Obama as model schools for the country. They've also recently received funding from Epstein. Although the schools are not charter schools, they are run with the efficiency expected of a charter school.

Bard High School Early College schools have a considerably smaller number of students than most high schools. Only 600 students attend each school. The student to teacher ratio is also surprisingly low for a public school, 20 to 1. Although the schools must meet Regent exam requirements the same as other public schools, they are given more autonomy and freedom when it comes to planning their curricula.

What also sets the Bard Schools apart, is that students graduate not only with a high school diploma, but with 60 college credits and an associates degree in the liberal arts and sciences from Bard College.

Admission to Bard High School is based on a student's writing ability and grades. It's a competitive program and fewer than 10 percent of students who apply are accepted each year.

In 2012, Epstein also provided substantial funding to the Maya Angelou charter schools in Washington, DC. The charter schools were started in 1997 for teenagers who were in the juvenile justice system. Since then, the charter schools have grown and now include four schools, including a program for older students. Currently, over 600 students attend the four schools. The graduation and college acceptance rate for the Maya Angelou Charter schools is considerably higher than for regular schools in the DC area.

Jeffrey Epstein notes that 73 percent of the school's graduates attend college and 60 percent go on to earn a college degree. The Jeffrey Epstein VI Foundation is proud to have been able to support such a worthy school.

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March 13, 2005

FRANK RICH

The Greatest Dirty Joke Ever Told

T was two and half weeks after 9/11 that I heard the dirtiest joke I'd ever heard in my life. New York was still tossing and turning under its blanket of grief back then. Almost no one was going out at night to have fun, a word that had been banished from the country's vocabulary. But desperately sad people will do desperate things. That's my excuse for making my way with my wife to the Hilton on Sixth Avenue, where the Friars Club was roasting Hugh Hefner.

Someone had decided that the show must go on. A crowd materialized out of nowhere to pack a vast ballroom in an otherwise shadowy and deserted Midtown. On the dais were not only the expected clowns old (Alan King) and young (Jimmy Kimmel) but a surreal grab bag of celebrities out of Madame Tussauds: Dr. Joyce Brothers, Ice-T, Patty Hearst, Donald Trump. "God Bless America" was sung by Deborah Harry.

The ensuing avalanche of Viagra jokes did not pull off the miracle of making everyone in the room forget the recent events. Restlessness had long since set in when the last comic on the bill, Gilbert Gottfried, took the stage. Mr. Gottfried, decked out in preposterously ill-fitting formal wear, has a manic voice so shrill he makes Jerry Lewis sound like Morgan Freeman. He grabbed the podium for dear life and started rocking back and forth like a hyperactive teenager trapped onstage in a school assembly. Soon he delivered what may have been the first public 9/11 gag: He couldn't get a direct flight to California, he said, because "they said they have to stop at the Empire State Building first."

There were boos, but Mr. Gottfried moved right along to his act's crowning joke. "A talent agent is sitting in is office," he began. "A family walks in - a man, woman, two kids, and their little dog. And the talent agent goes, 'What kind of an act do you do?' " What followed was a marathon description of a vaudeville routine featuring incest, bestiality and almost every conceivable bodily function. The agent asks the couple the name of their unusual act, and their answer is the punch line: "The Aristocrats."

As the mass exodus began, some people were laughing, others were appalled, and perhaps a majority of us were in the middle. We knew we had seen something remarkable, not because the joke was so funny but because it had served as shock therapy, harmless shock therapy for an adult audience, that at least temporarily relieved us of our burdens and jolted us back into the land of the living again. Some weeks later Comedy Central would

cut the bit entirely from its cable recycling of the roast. But in the more than three years since, I have often reflected upon Mr. Gottfried's mesmerizing performance. At a terrible time it was an incongruous but welcome gift. He was inviting us to once again let loose.

I bring up that night now because I've seen "The Aristocrats," a new documentary inspired in part by Mr. Gottfried's strange triumph. Unveiled in January at Sundance, it's coming to a theater near some of you this summer. (It could be the first movie to get an NC-17 rating for sex and nudity not depicted on screen.) But I also bring up that night for the shadow it casts on a culture that is now caught in the vise of the government war against "indecency." The chill cast by that war is taking new casualties each day, and with each one, the commissars of censorship are emboldened to extend their reach. When even the expletives of our soldiers in Iraq are censored on a public television documentary, Mr. Gottfried's unchecked indecency seems to belong to another age.

The latest scheme for broadening that censorship arrived the week after the Oscar show was reduced to colorless piffle on network television. Ted Stevens, the powerful chairman of the Senate Commerce Committee, pronounced himself sick of "four-letter words with participles" on cable and satellite television. "I think we have the same power to deal with cable as over the air," he said, promising to carry the fight all the way to the Supreme Court. Never mind that anyone can keep pay TV at bay by not purchasing it, and that any parent who does subscribe can click on foolproof blocking devices to censor any channel. Senator Stevens's point is to intimidate MTV, Comedy Central, the satellite radio purveyors of Howard Stern and countless others from this moment on, whether he ultimately succeeds in exerting seemingly unconstitutional power over them or not.

If you can see only one of the shows that he wants to banish or launder, let me recommend the series that probably has more four-letter words, with or without participles, than any in TV history. That would be "Deadwood" on HBO. Its linguistic gait befits its chapter of American history, the story of a gold-rush mining camp in the Dakota Territory of the late 1870's. "Deadwood" is the back story of a joke like "The Aristocrats" and of everything else that is joyously vulgar in American culture and that our new Puritans want to stamp out. It's the ur-text of Vegas and hip-hop and pulp fiction. It captures with Boschian relish what freedom, by turns cruel and comic and exhilarating, looked and sounded like at full throttle in frontier America before anyone got around to building churches or a government.

Its creator is David Milch, a former Yale fraternity brother of George W. Bush and the onetime protégé of Robert Penn Warren, whose 1946 novel "All the King's Men" upends bowdlerized fairy tales about American politics just as "Deadwood" dismantles Hollywood's old sanitized Westerns. As Mr. Milch says in an interview on the DVD of the first "Deadwood" season: "It's very well documented that the obscenity of the West was striking, and that the obscenity of mining camps was unbelievable." There was "a tremendous energy to the language," he adds, but the reason this language never surfaced in movie Westerns during the genre's heyday was the Hays production code. For some 30 years starting in 1934, Hollywood's self-censorship strictures kept even married couples in separate beds on screen.

Mr. Milch has fought such codes in the past. He was a co-creator, with Steven Bochco, of the network police show, "NYPD Blue," which prompted protests in 1993 for its rude language and exposure of David Caruso's backside. That battle was won; "NYPD Blue" overcame the howls of the American Family Association and an early blackout by some ABC affiliates to become a huge hit that ended its run only this month. But it's a measure of what has happened since that now even the backside of a cartoon toddler is being pixilated in the animated series "Family Guy," on Fox. Mr. Bochco told Variety, "I don't think today we could launch or sell 'NYPD Blue' in the form that it launched 12 years ago." He's right. We're turning the clock back to the days of Hays.

This is why "Deadwood" could not be better timed. It reminds us of who we are and where we came from, and that even indecency is part of an American's birthright. It also, if inadvertently, illuminates the most insidious underpinnings of today's decency police by further reminding us that the same people who want to stamp out entertainment like "Deadwood" also want to rewrite American history (and, when they can, the news) according to their dictates of moral and political correctness. They won't tolerate an honest account of the real Deadwood in a classroom or museum any more than they will its fictionalized representation on HBO.

Lynne Cheney has taken to writing and promoting triumphalist children's history books that, as she said on Fox News recently, offer "an uncynical approach to our nation and to our national story." (So much for her own out-of-print "Deadwood"-esque novel of 1981, "Sisters," with its evocation of lesbian passions on the frontier.) That's her right. But when her taste is enforced as government policy that's another matter. The vice president's wife has used her current political clout, as The Los Angeles Times uncovered last fall, to quietly squelch a Department of Education history curriculum pamphlet for parents that didn't fit her political agenda. It's no coincidence that Senator Stevens attacked the Smithsonian Institution in the 1990's when it mounted an exhibit deromanticizing the old West, "Deadwood"-style, by calling attention to the indignities visited on women, Indians and the environment.

At a certain point political correctness on the right becomes indistinguishable from that of the left. On the Oscar telecast, Robin Williams was prohibited by ABC from delivering a satirical comic song by Marc Shaiman and Scott Wittman, the "Hairspray" songwriting team, inspired by James Dobson's attack on the "pro-homosexual activism" of the cartoon character SpongeBob SquarePants. One of the no-no's: an unflattering reference to Indian casinos in the lyric "Pocahontas is addicted to craps." If the lyric had said Pocahontas was victimized by white guys, the right would have shut the song down just as fast.

"It's a dangerous world we're living in when you get to the point that a joke about Jude Law is the most controversial thing in the Oscar show," says the TV star and standup comic Bob Saget. "I'm missing Marlon Brando's Indian wife, David Niven and the streaker." I had called Mr. Saget because he is one of the hundred or so comedians who appear in the documentary "The Aristocrats," in which another comic, Paul Provenza, and the magician-comedian Penn Jillette interview their peers about the decades-long history and countless improvisational variations on the film's eponymous joke.

The movie is a multigenerational compendium of comedians, from Phyllis Diller and Don Rickles to George Carlin, Chris Rock, Jon Stewart, Sarah Silverman and Cartman of "South Park." But the raunchiest participants are often those best known for their roles in family-friendly sitcoms on network TV: Drew Carey, Jason Alexander, Paul Reiser. I asked Mr. Saget, who starred as a lovable widower father in the long-running hit "Full House," where his own impulse to tell X-rated standup comes from. Among his reasons: "There's something about all of us that wants to push the limits of the world we're in, where you can't say anything. There's a time and a place for stuff that is freeing for people."

I'm not a particular enthusiast for dirty jokes, but that freedom is exactly what I, and I suspect others, felt when a comic with a funny voice in a bad suit broke all the rules of propriety at that Friars Roast. But it was just three days earlier at the White House that Ari Fleischer, asked to respond to a politically incorrect remark about 9/11 by another comedian, Bill Maher, warned all Americans "to watch what they say." That last week in September 2001, I've come to realize, is as much a marker in our cultural history as two weeks earlier is a marker in the history of our relations with the world. Even as we're constantly told we're in a war for "freedom" abroad, freedom in our culture at home has been under attack ever since.

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Sent: 10/16/2016 10:34:07 PM
To: jeevacation@gmail.com
Subject: Re: Trump told me

Importance: High

Send me pic of you and trump !

Sent from my iPhone

> On Oct 16, 2016, at 6:33 PM, [redacted] wrote:
>
> I was the smartest woman he had ever met he offered me a job .(based on who I was)
> Not a resume no one took me seriously but he did !!!
> He would be wise to put me on his Champaign trail my Trump story would lead him to Victory ..
> His intuition lead him to his success and his intuition would make this country great ..
>
> Sent from my iPhone

THE AM LAW LITIGATION DAILY

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Page printed from: *Litigation Daily*

White Collar Titan Reid Weingarten on Juries, Clients and the Scariest Federal Prosecutors

Jenna Greene, The Litigation Daily

September 4, 2015

Hope you never have to call Reid Weingarten. Because if you do, it means you're in a world of trouble.

The Steptoe & Johnson LLP partner is one of the country's preeminent white collar defense lawyers. His clients have included former WorldCom CEO Bernard Ebbers, former Enron chief accounting officer Richard Causey, former Tyco general counsel Mark Belnick and film director Roman Polanski, as well as Goldman Sachs CEO Lloyd Blankfein.

But if you do have to call him, here's a bonus: he's one of the most interesting, engaging lawyers you'll ever meet.

Weingarten spoke at length with the Litigation Daily about his practice—what it means when he wants the "smart jurors," what he says to prosecutors in their offices to convince them not to bring a case, how he and close friend Eric Holder Jr. years ago started a foundation that has helped thousands of juvenile offenders and at-risk teens.

The interview has been edited for clarity and length.

Lit Daily: A corporate executive recently told me he thought the best lawyers are as much psychologists as legal experts. Do you agree?

Reid Weingarten: Yes, yes, yes. The ratio is probably two-thirds lawyer, one-third shrink.

There are two distinct parts to my practice—the New York piece, largely CEOs and CFOs, Wall Street guys, hedge fund guys—and the D.C. piece, largely but not exclusively public official types and people who deal with public officials.

These are all big-ego, extraordinarily successful people who find themselves dramatically at odds with Uncle Sam, because typically people don't come to me unless the Justice Department wants to put them in prison for a long time and take all their money.

Sometimes their reaction is denial, sometimes shock and horror, sometimes anger, but it's always dramatic. The mission at a minimum is to get the client to understand what's happening so that he can be effective for me, in terms of my defending him.

LD: Have you ever declined to represent someone because you were so appalled by what they did?

RW: At this point, I'm in the fortunate position of turning down more cases than I take. I turn down cases for many reasons, though it's not so much that I'm appalled by the behavior.

The way I look at it is, do I bring value? Is there something about me representing the individual that adds something, as opposed to every other lawyer in town? I think if I halted, or I was so shocked or appalled or dismayed by the conduct that I'd pull my punches, I'd know that.

I break bread with the would-be client. If there's a visceral feel, either overtly or covertly, that I'm not going to want to spend time with him or her, it all factors in. There are often a variety of factors that cause me to take seriously the potential of the representation, and then I turn it down.

LD: Are conflicts much of an issue?

RW: Steptoe & Johnson is a big firm, but it's not one of the megafirms. There have probably been a dozen significant matters I got conflicted out of because of Steptoe's other representations. But I have colleagues who work at much bigger firms who are constantly getting conflicted out of representations.

I represented the CEO of Goldman Sachs, and Goldman intersects with everyone in the world. If I had nothing but Goldman-like representations, that would be an issue. But if you represent Jesse Jackson Jr. or [other] public officials, as I do, the potential for conflicts is significantly less.

LD: What agency is most likely to strike fear in the heart of defendants?

RW: The Southern District of New York is the elite prosecutor's office in the country. I don't think you'd get much dispute there. They're aggressive, they're smart, they have this enormous home court advantage. Right after them, there are several very fine, very aggressive, very talented U.S. attorneys offices like Chicago, Boston, EDVA and certainly the District of Columbia. And you can go to Topeka, Kansas, or Burlington, Vermont, and find a federal prosecutor who is very smart, has a good case and is talented in court.

In the Justice Department itself, there's the Criminal Division, and the two litigating sections—the public integrity section, where I was for 10 years, and the fraud section. They've had their ups and downs. As a defense attorney dealing with both sections regularly, you can have your hands full with either.

LD: Some of the people you've represented have been so high-profile. How much of a challenge is jury selection, and how do you handle it?

RW: By way of example, in my most recent trial I went down to New Orleans. I represented the former head of exploration for BP, who was accused of lying to Congress about how

much oil was coming out of the hole after the explosion. BP had pleaded guilty to the very same conduct and paid $4 billion. That was not a positive piece.

I was told by everybody that BP was loathed in New Orleans. So now I have to pick a jury in New Orleans for the very same conduct the company pleaded guilty to. And BP had paid a zillion dollars to every fisherman and stripper in New Orleans who claimed the spill prevented them from earning a living. But now, BP was getting pissed off that they were getting ripped off, and were pulling back. In addition to being hated for killing all the pelicans and ruining tourism and fishing, now they're pulling back on their largesse.

So I have to pick a jury. We had all the consultants you can imagine. The common wisdom was, don't pick anybody close to the gulf, because anyone close to the explosion will hate BP, and don't take African-Americans because they hate fancy white lawyers from Washington, blah blah blah.

I picked a jury and I did exactly the opposite, because my gut was that a sophisticated person near the water who is familiar with the industry will appreciate how difficult it is to drill these wells. If you have 100 deep sea wells in the gulf, every once in a while, you're going to have an accident.

And there's no reason to assume that the rest of the population, no matter what their background or color, wouldn't strive to be fair. I also thought I had the upper hand in that I didn't think my client was guilty of anything, so I went against the grain.

You have standard thinking among most defense counsel on jury selection, and this is an instance where I threw it out, and the jury came back in about two seconds and acquitted. I was lucky and right.

It's interesting to see who wants the smart jurors. Sometimes prosecutors want the smart jurors, sometimes I want the smart jurors. That is an indication of who thinks they have the righteous case. When prosecutors are striking all the lawyers and accountants and college-educated people, and—in New York City this happens—they want doormen and bus drivers, what they want is to rely on visceral hatred for the target and also a visceral reliance on Uncle Sam, as opposed to the facts.

When that happens, I want to blow my brains out, because that's not how prosecutors should behave. Prosecutors always should have the righteous case, and it should only be crafty defense attorneys who want to obscure the facts. When I want the smart jurors because I think I have a righteous case, that case never should have been brought.

These days I find that to be the case many times.

LD: How do you prepare for court? Do you rehearse what you're going to say?

RW: I can't prepare that way. There are clients who say, "I want to hear your opening before you make it." I say, "Get another lawyer."

This is not good or bad, it's just Reid. I can't say the same thing twice, and I cannot read a speech. It's not how I work with information.

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If I think there's a real likelihood there's going to be a trial, I'll make a file for opening, a file for closing, a file for putting the client on, and I'll make a cross-examination file for the snitch or snitches. If I'm taking a walk or kayaking in the North Atlantic or sleeping and have a thought, I'll throw notes in there. Two days before the opening, I'll go through the notes.

I'll have it largely in my head. I used to have a chocolate Lab I'd walk in the woods behind my house. I'd talk to myself, and I'd talk to Emma the chocolate Lab, and we'd try things and I'd practice my opening with her, but only with her.

The notes I toss in those files end up being what I do in court.

LD: You've been described as "almost constitutionally incapable of settling a case." Do you think that's true?

RW: No. I've had a lot of trials, but the great majority of my advocacy is done in prosecutors' offices. I'll say one or two things. One is that 'this is not a righteous case, and here's why,' and/or 'If you bring it, I'll kick your ass.' I find sometimes No. 2 is more effective, especially if it's a high-profile matter. In that sense, the case doesn't go to trial.

But Jesse Jackson Jr., for example, pleaded guilty and went to prison for couple of years. I didn't do it because I am a snitch lawyer or because I'm a rollover guy. I did it because the evidence was overwhelming, and there was no choice about it, and it was in his interest. And of course it was what he wanted to do.

I settle cases. But the people who come to me generally are people who have thought through the issues and decided there's a real chance of a scrap, and someone recommends me. Those are the people with whom I have the initial conversation, not people who are looking for an old-timer who routinely gets the best deals. Those are not the people who come to me.

LD: How do you handle losses?

RW: Do I want to throw myself off a bridge? Yeah. It's interesting psychologically—I just had this very nice win in New Orleans. I expected it, I was gratified, I'm very fond of my client, I was pleased—and three minutes later I'm done, on to the next one. When I lose, I replay the spool and second-guess myself constantly. It's hard to shake. The pain of a defeat is much greater than the joy of victory. I don't know why that is—I wish it were otherwise.

LD: Is there one win that stands out as particularly satisfying?

RW: It would be hard to separate them out. A couple come immediately to mind.

I represented a kid named Lamar Owens. He was a black Navy quarterback accused of rape by a white young woman who was his classmate. He actually moved into my house and became close friends with my son. He was acquitted of the rape charge.

I represented Ron Carey, the president of the Teamsters, during 9/11. I actually saw the second plane go into the tower. And we came back two weeks later when the court was put back together and got an acquittal. That was a huge experience.

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Ted Wells [at Paul, Weiss, Rifkind, Wharton & Garrison] and I did Mike Espy together. That was probably the first huge national trial I had as a defense lawyer. Espy was a very promising former congressman from Mississippi who [Bill] Clinton made secretary of Agriculture. It was very controversial because traditional, white hidebound farmers were not crazy about Mike Espy being secretary, and he was charged with taking bribes from Don Tyson. It was a huge trial, and I think there were 35 counts of not guilty on everything. That put me in a different place. I'm friends with Espy to this day, and very close friends with Ted Wells.

LD: Do you wind up being friends with many of your clients?

RW: Some, certainly not all. For many, even when there's an acquittal, the experience is so harrowing that they want to close that chapter. To maintain a relationship with me would hamper that closure for them.

With opposing counsel—these days, that's prosecutors—one of two things happens. We become close friends or we never speak again. There's no middle ground.

LD: Tell me a little about the See Forever Foundation and how it came into existence.

RW: By accident of history, [former Attorney General] Eric Holder and I are extremely close. We grew up together in the Justice Department and had offices next to each other for many years in the public integrity section. We're like family. We used to go to Oak Hill, which was then this dreadful juvenile justice facility in Maryland, and teach and tutor in the jail.

We came to the conclusion that one-third of these kids are hopelessly gone, we can't fix them no matter what, too much damage. One-third who knows, but one-third we could fix. These were the kids with the bright eyes and quick wit, usually drug runners. We made a commitment and we started the foundation. David Domenici, the son of the senator from New Mexico, and James Forman Jr., son of the famous civil rights leader, they deserve the credit. Reid Weingarten does not. I started it. Eric had to drop by the wayside when he became the U.S. attorney [for the District of Columbia], because he had to prosecute these kids. It was an obvious conflict. He's been a supporter in his heart since then.

But David Domenici and James Forman are phenomenally gifted lawyers who for 20 years threw their lives at this. They brought Maya Angelou in. Bob Strauss of Akin Gump gave us a million bucks, and we bought a building on Ninth Street in the Shaw neighborhood. That was a huge turning point.

We took over the education at Oak Hill, turned it around, and right now it's a model for the country. We are also a large public charter school. Frankly, it's had its ups and downs. But when I put my head down for the last time and think about what I've done and not done, the See Forever experience will be one of the things that gives me the most satisfaction.

Contact Jenna Greene at jgreene@alm.com or on Twitter @jgreenejenna.

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Strange Bedfellows:
Culture, Mgggggggeet Science/Science, Meet Culture

This series will bring together cultural icons, celebrities, movie stars, directors, writers and musicians with famous scientists to talk about commonalities and differences. Each segment will be moderated by scientist/author/provocateur Lawrence Krauss, who has spent much of his career successfully crossing the chasm separating science and culture. His Origins Project at Arizona State University produced singular events in which over 3000 people would regularly attend live, and up to 500,000 people would watch the recorded events to hear dialogues and panels, to be entertained and informed.

First Season

1. Johnny Depp, Courtney Love, Michael Manson talk creativity in music versus creativity in Science with Nobel Laureates Frank Wilczek and Yuval Hoffman.
2. Woody Allen talks about the human condition with Linguist Noam Chomsky.
3. Ricky Gervais and Astronomer Royale, former President of the Royal Society, Martin Rees.
4. Sarah Silverman and Nobel Prizewinning economist Paul Krugman.
5. William Shatner and Nobel Prize winning physicists Kip Thorne/ Steve Weinberg or Elon Musk.
6. Director Werner Herzog, Cormac McCarthy, with biologist Svante Paabo.
7. Ian McEwan and physicist/writer Jana Levin or Nobel Laureate Biologist Elizabeth Blackburn.
8. Barack Obama and psychologist Steven Pinker.
9. Director Alex Garland and IT computer scientist Eric Horvitz/Larry Page
10. Actor Bill Pullman and Nobel Prizewinning economist/psychologist Danny Kahneman.

The series will bring together Krauss and the directorial team that produced the Feature Documentary *The Unbelievers.* Each episode will be shot in a beautiful location in a different city around the world. We will go where the participants live, or work.

Format will be moderated discussion. Krauss will introduce each participant and being the episode by asking some questions to provoke discussion. The participants will be encouraged whenever possible to dialogue with each other as well. We may or may not have a studio audience, and if we do, we will take one or two questions from the audience to end the program before Krauss gives concluding remarks.

The New Origins Project Presents:
Strange Bedfellows:
Culture, Meet Science/Science, Meet Culture

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First Season (Proposed—23 participants have already agreed in principle)

1. Johnny Depp, Courtney Love, Michael Manson talk creativity in music versus creativity in Science with Nobel Laureates Frank Wilczek and Yuval Hoffman.
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12. Actress Andie Macdowell and Evolutionary Biologist Richard Dawkins

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Rough Budget:

Filming	$100K/episode	$1.2 Million
Venues	$50K/episode	$0.6 Million
Transportation	$15K/episode	$0.18 Million
Fees	$100K/episode	$1.2 Million
	TOTAL Production Cost	$3.18 Million

The New Origins Project Presents:
Strange Bedfellows:
Culture, Meet Science/Science, Meet Culture

This series will bring together cultural icons, celebrities, movie stars, directors, writers and musicians with famous scientists to talk about commonalities and differences. Each segment will be moderated by scientist/author/provocateur Lawrence Krauss, who has spent much of his career successfully crossing the chasm separating science and culture. When at Arizona State University, the Origins Project he created and led for a decade there produced singular events in which over 3000 people would regularly attend live, and up to 500,000 people would watch the recorded events to hear dialogues and panels, to be entertained and informed.

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Budget:

Filming	$100K/episode	$1.2 Million
Venues	$50K/episode	$0.6 Million
Transportation	$20K/episode	$0.24 Million
Fees	$300K/episode	$3.6 Million
Other Production costs	$30K/episode	$0.36 Million
Total	$500K/episode	$6.0 Million

Top aide of Epstein prosecutor in sex case defends former boss

By JULIE K. BROWN
Miami Herald

MIAMI — A former top prosecutor involved in the Jeffrey Epstein sex case is defending his old boss, Alexander Acosta, whose decision to craft a secret plea deal with the wealthy New York hedge fund manager has come under federal scrutiny.

Epstein, who also has homes in Palm Beach, Fla., and New York, lives on Little St. James Island off St. Thomas.

In his first public comments on the 10-year-old case, Jeffrey H. Sloman — who at the time was second in command under Acosta at the U.S. Attorney's Office in Miami — said prosecutors resolved the case based on the facts and evidence, and what he called "legal impediments," including the belief that many of Epstein's teenage victims were too "terrified" to cooperate in the case.

"Given the obstacles we faced in fashioning a robust federal prosecution, we decided to negotiate a resolution," said Sloman, now in private practice. "We did not reach this decision lightly and it came only after significant and often rancorous internal debate."

Jeffrey Epstein

Alexander Acosta

In a lengthy opinion piece submitted to the Miami Herald Editorial Board, Sloman alleges that scrutiny of Acosta's role in the controversial case is being fueled by politically motivated critics who failed to raise significant issues with it when Acosta was nominated and confirmed as the U.S. secretary of labor in 2017.

Sloman's comments come two weeks after the Justice Department announced it had opened an investigation into prosecutorial misconduct in the case involving Epstein, who ran a sex pyramid scheme from his Palm Beach estate that targeted scores of underage girls from 2001 to 2006.

Jeffrey H. Sloman — who at the time was second in command under Alexander Acosta at the U.S. Attorney's Office in Miami — said prosecutors resolved the case based on the facts and evidence, and what he called "legal impediments," including the belief that many of Jeffrey Epstein's teenage victims were too "terrified" to cooperate in the case.

About 30 members of Congress demanded the probe following a Miami Herald series of stories, "Perversion of Justice," that detailed how federal prosecutors, led by Acosta, stitched together an unusual immunity deal that allowed Epstein to escape what could have been a life sentence in federal prison.

Instead, Epstein — whose friends included President Donald Trump, Bill Clinton and other politically connected people — was allowed to quietly plead guilty to prostitution charges in state court. He served 13 months in the county jail, where he was allowed liberal work release privileges rarely given to sex offenders in Florida and barred by the Palm Beach Sheriff's Department's own rules.

He was released in 2009, but his victims — who were 13 to 16 years old at the time — are still fighting more than a decade later to have his non-prosecution agreement overturned.

In his op-ed, Sloman called Acosta "an outstanding public servant … at risk of becoming collateral damage in Washington's latest polarized conflagration," adding, "I won't let it happen without first being heard."

"As additional details about Epstein's crimes have emerged, it is clear to me that we should have pushed for much harsher terms," Sloman wrote. "That said, some have mistakenly suggested that our office kowtowed to Epstein's high-priced defense lawyers or, worse, that his lawyers corrupted or intimidated us into submission … nothing could be further from the truth."

Sloman did not directly address the chief complaint brought by Epstein's victims, who are now in their late 20s and early 30s. Those who spoke to the Herald said they felt betrayed by federal prosecutors, who sealed the non-prosecution agreement from public view so that they wouldn't find out about it before he was sentenced. It would be almost a year before they were successful in having it unsealed. By then, it was too late to try to derail it.

They allege, in a federal lawsuit filed against the government, that prosecutors deliberately kept the deal secret — in violation of federal law — to prevent them from appearing at Epstein's sentencing to possibly undo the deal. Nor did Sloman address why prosecutors also gave immunity to a number of Epstein's co-conspirators, who have never been identified.

See **EPSTEIN,** page 8

From: Darren Indyke [redacted]
Sent: 5/10/2019 11:01:49 PM
To: jeevacation@gmail.com; Martin Weinberg [redacted]
CC: Darren Indyke [redacted]
Subject: Acosta plea deal in Epstein sex case defended by former aide | Miami Herald
Attachments: Jeffrey Sloman-Article-201401221517.jpg; alexander-acosta-ap071010029016-cropped.jpg

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Top aide of Jeffrey Epstein prosecutor Acosta: We acted with integrity

February 15, 2019 12:17 PM

Palm Beach multimillionaire Jeffrey Epstein is a free man, despite sexually abusing dozens of underage girls according to police and prosecutors. His victims have never had a voice, until now. By **Emily Michot** | **Julie K. Brown**

A former top prosecutor involved in the Jeffrey Epstein sex case is defending his old boss, Alexander Acosta, whose decision to craft a secret plea deal with the wealthy New York hedge fund manager has come under federal scrutiny.

In his first public comments on the 10-year-old case, Jeffrey H. Sloman — who at the time was second in command under Acosta at the U.S. Attorney's Office in

Miami — said prosecutors resolved the case based on the facts and evidence, and what he called "legal impediments," including the belief that many of Epstein's teenage victims were too "terrified" to cooperate in the case.

"Given the obstacles we faced in fashioning a robust federal prosecution, we decided to negotiate a resolution," said Sloman, now in private practice. "We did not reach this decision lightly and it came only after significant and often rancorous internal debate."

Jeffrey Sloman, who was second-in-command to then-U.S. Attorney Alexander Acosta when the latter was deciding whether to prosecute Jeffrey Epstein, says the office handled the case properly. Aixa Montero Holt

In a lengthy opinion piece submitted to the Miami Herald Editorial Board, Sloman alleges that the attacks on Acosta's role in the controversial case are politically driven by critics who failed to raise significant issues when Acosta was nominated and confirmed as the U.S. secretary of labor in 2017.

Sloman's comments come two weeks after the Justice Department announced it had opened an investigation over whether there was prosecutorial misconduct in the case involving Epstein, who ran a sex pyramid scheme from his Palm Beach estate that targeted scores of underage girls from 2001 to 2006.

About 30 members of Congress demanded the probe following a Miami Herald series of stories, "Perversion of Justice," that detailed how federal prosecutors, led

by Acosta, stitched together an unusual immunity deal that allowed Epstein to escape what could have been a life sentence in federal prison.

U.S. Labor Secretary Alexander Acosta has been criticized for the plea deal he worked out with Jeffrey Epstein. Acosta was U.S. attorney for Southern Florida at the time. Alan Diaz

Instead, Epstein — whose friends included President Donald Trump, former President Bill Clinton and other politically connected people — was allowed to quietly plead guilty to prostitution charges in state court. He served 13 months in the county jail, where he was allowed liberal work release privileges rarely given to sex offenders in Florida and barred by the Palm Beach Sheriff's Department's own rules.

He was released in 2009, but his victims — who were 13 to 16 years old at the time — are still fighting more than a decade later to have his non-prosecution agreement overturned.

In his op-ed, Sloman called Acosta "an outstanding public servant ... at risk of becoming collateral damage in Washington's latest polarized conflagration," adding, "I won't let it happen without first being heard."

Jeffrey Epstein apologizes, but not to his victims

Jeffrey Epstein, a multimillionaire who molested dozens of underage girls, and is suspected of trafficking countless other girls around the world, issued a public apology Tuesday. It was not to the victims of his abuse, but to one of their lawyers.

“As additional details about Epstein’s crimes have emerged, it is clear to me that we should have pushed for much harsher terms,” Sloman wrote. “That said, some have mistakenly suggested that our office kowtowed to Epstein’s high-priced defense lawyers or, worse, that his lawyers corrupted or intimidated us into submission. ... Nothing could be further from the truth.”

Sloman did not directly address the chief complaint brought by Epstein’s victims, who are now in their late 20s and early 30s. Those who spoke to the Herald said they felt betrayed by federal prosecutors, who sealed the non-prosecution agreement from public view so that they wouldn’t find out about it before he was sentenced. It would be almost a year before they were successful in having it unsealed. By then, it was too late to try to derail it.

They allege, in a federal lawsuit filed against the government, that prosecutors deliberately kept the deal secret — in violation of federal law — to prevent them from appearing at Epstein’s sentencing to possibly undo the deal. Nor did Sloman address why prosecutors also gave immunity to a number of Epstein’s co-conspirators, who have never been identified.

“They cut a deal which they have to know was a failure,” said Marci Hamilton, a law professor at the University of Pennsylvania and executive director of Child USA, which advocates for children’s civil liberties. “ They kept it secret and they didn’t charge the co-conspirators. The horror of this is if you don’t hold all the ‘Johns’ accountable, then it doesn’t stop. This case involved multiple girls, multiple men, multiple recruiters, multiple times and he recruited girls to get other girls. That’s a trafficking organization.”

Acosta has not commented since 2011, when he defended his decisions in a publicly issued letter that can be found in the federal court file. In it, he described what he called a “yearlong assault” on prosecutors by Epstein’s “army of legal superstars,” including Roy Black, Kenneth Starr and Alan Dershowitz, among others. In four long paragraphs, Acosta detailed how defense attorneys relentlessly worked to manipulate the negotiation process, often frustrating prosecutors.

“They would obtain concessions as part of a negotiation and agree to proceed, only to change their minds, and appeal the office’s decision to Washington,” Acosta wrote, adding that their tactics included delving into the private family lives of individual prosecutors in an effort to discredit them and get them removed from the case.

Wrote Sloman: “The Herald’s ‘Perversion of Justice’ series presented a heartrending portrait of Epstein’s victims and made a strong case that he should have gone to jail much longer, but never explained or substantiated its accusation that we schemed with Epstein’s lawyers.”

The Herald's series quoted a trove of letters and emails between prosecutors and Epstein's defense team that showed that Epstein's lawyers were allowed to dictate the terms of each deal that they drew up, and prosecutors repeatedly backed down on deadlines. The lead prosecutor, Marie Villafaña, amid the negotiations wrote to Epstein lawyer Jay Lefkowitz: "I thought we had worked very well together in resolving this dispute. ... I feel that I bent over backwards to keep in mind the effect that the agreement would have on Mr. Epstein."

Where are they now? The biggest players in the Jeffrey Epstein case

The girls who were abused by Jeffrey Epstein and the cops who championed their cause remain angry over what they regard as a gross injustice, while Epstein's employees and those who engineered his non-prosecution agreement have prospered.

The email chain also shows that prosecutors sometimes communicated with the defense team using private emails, and that their correspondence referenced discussions that they wanted to have by phone or in person so that there would be no paper trail, the Herald found. At one point, Acosta met privately with Lefkowitz, who came from the same Washington, D.C.-based law firm, at a Marriott hotel in West Palm Beach, the emails showed. It was at that meeting, the records show, when Acosta agreed to keep the deal secret.

The correspondences also show that Sloman sought several times to have Epstein's victims notified about the deal, as required under the Crime Victims Rights Act. But after Epstein's lawyers aggressively objected and appealed to Acosta, it never happened.

Sloman, however, insisted that Epstein's lawyers' aggressive defense had no bearing on the office's decision to set aside what court records show was a 53-page federal indictment it had prepared against Epstein. Sloman said the facts dictated that Epstein should plead guilty to what he called "a crime in state court that reflected his true conduct," adding that the case was "at heart, a local sex case."

"It is a gross mischaracterization to describe this as a local sex case," said lawyer Jack Scarola, a representative of several of Epstein's then-underage victims. "There was ample evidence that Epstein was operating on a large international scale. The involvement of the federal government was a consequence of evidence that children were crossing national and state borders for the purpose of prostitution."

At the time that the case was closed, FBI investigators had identified nearly 40 victims — and more were coming forward — who said they had been molested or sexually assaulted by Epstein and some of his co-conspirators. One of those victims, Courtney Wild, told the Herald that she brought at least 60 girls to his waterfront

Palm Beach estate over time. She wanted Epstein prosecuted — and was willing to testify — but prosecutors never gave her the chance, she told the Herald.

In addition, FBI records show that agents had traveled to New York and New Mexico to interview other possible victims, the Herald found. The non-prosecution deal that was struck was filed under seal. The result was that no one — not even the judge — would know the full scope of Epstein's crimes and how many victims were involved.

Acosta, who now heads a federal agency with oversight of international child labor laws and human trafficking, was personally involved in the negotiations, records, letters and emails show.

AG nominee Barr pledges to look into handling of Epstein case

Sen. Ben Sasse questioned attorney general nominee William Barr about the Jeffrey Epstein case on January 15, 2019, getting the nominee to commit to having the Department of Justice look into the handling of that case if confirmed.

By C-SPAN

Sloman reiterated Acosta's earlier contention that most of Epstein's victims wouldn't cooperate.

"So somehow, had Epstein been a child molester of one or two victims, then they would have prosecuted him?" said Wild's attorney, Brad Edwards, in an interview with the Herald for its series published in November. "But because he molested hundreds of victims and some of them wouldn't testify, then they are saying, 'we can't prosecute.' How absurd is that argument?"

Edwards tried unsuccessfully to block the plea deal in federal court. In 2008, days after Epstein was sentenced, he filed an emergency order, alleging that the agreement was illegal because it violated the Crime Victims' Rights Act, which grants crime victims certain rights, including the right to confer with prosecutors and be notified of a plea deal. The lawsuit is still pending a decade later.

"There is a reason for the Crime Victims Rights Act — so that prosecutors don't preempt a victim's ability to speak for themselves about a proposed plea bargain," Scarola said. "Here, the decision was being made secretly for them."

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THE SEARCH FOR PEACE IN THE ARAB–ISRAELI CONFLICT

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OUP CORRECTED PROOF – FINAL, 12/9/2014, SPi

The Search for Peace in the Arab–Israeli Conflict

A Compendium of Documents and Analysis

Edited by
TERJE RØD-LARSEN
NUR LAIQ
AND FABRICE AIDAN

OXFORD
UNIVERSITY PRESS

HOUSE_OVERSIGHT_023135

OUP CORRECTED PROOF – FINAL, 12/9/2014, SPi

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
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First Edition published in 2014

Impression: 1

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2014939580

ISBN 978–0–19–921610–9

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

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Foreword and Acknowledgements

The idea of compiling an Oxford companion to the Arab–Israeli conflict was first presented to me in 2005 by Markus Bouillon, who served for me both in my UN capacity in Jerusalem and at the International Peace Institute (IPI) in New York. Nur Laiq laboriously and faithfully collected most of the relevant documents and contributed to the organization of the book and the drafting of the introduction and comments. Fabrice Aidan, a French diplomat, who served for ten years as my special assistant and political adviser in my different United Nations capacities played an instrumental role for the production of this volume. He made essential substantive inputs to the organization and compilation of the documents and the composition of the comments, throughout the book, as well as to the introduction. David Makovsky and Marwan Muasher deserve thanks for reviewing the book and for providing insightful comments.

I would like also to thank my staff at the International Peace Institute (IPI), Walter Kemp and Adam Lupel, for their editing contribution. Miklos Pinther, former chief UN cartographer, who in 2000 oversaw the delineation of the Blue Line between Israel, Lebanon and Syria, compiled and produced the maps in this volume. Finally, my executive assistant, Jilla Moazami, gave invaluable administrative support. Without these colleagues, the book would have never come to print. I am delighted that the volume came to its conclusion on the occasion of the 20th anniversary of the signing of the Oslo Accords of 1993.

I am grateful to the Government of Norway for generous support to the International Peace Institute's (IPI) Middle East program over many years.

I dedicate the book to my beloved wife, Ambassador Mona Juul, my companion in war and peace, without whom I would never have become involved in the imbroglio of the Middle East.

Terje Rød-Larsen

Paris
16 September 2013

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About the Editors

TERJE RØD-LARSEN

Terje Rød-Larsen became the President of the International Peace Institute (IPI) in 2005. IPI is an independent, international not-for-profit think tank headquartered in New York, with regional offices in Vienna and Manama. IPI is dedicated to the prevention and settlement of conflict. The UN Secretary-General is the honorary chair of the board of the International Peace Institute. Concurrently, Terje Rød-Larsen is a UN Under-Secretary-General. He serves as a Special Envoy of the Secretary-General.

Terje Rød-Larsen began his career as an academic, studying history, philosophy, public administration, and sociology. He taught Sociology, Political Science, and Philosophy at the Universities of Bergen and Oslo, before establishing the Fafo Institute for Applied Sciences in Oslo in 1981.

As Director of Fafo, he initiated a research project into the living conditions of Palestinians in the West Bank and Gaza Strip. The relationships with both Palestinians and Israelis that he established during the period of preparing and implementing this project led to a request by the PLO in 1992 that he help establish a secret channel for negotiations between the PLO and the Government of Israel. Those negotiations concluded with the Oslo Accords and the signing of the Declaration of Principles at the White House on 13 September 1993.

In 1993, Mr Rød-Larsen was appointed Ambassador and Special Adviser for the Middle East Peace process to the Norwegian Foreign Minister. In mid-1994, he was appointed United Nations Under-Secretary-General, Special Coordinator for Gaza and the West Bank. In 1996, he was appointed Norwegian Cabinet Minister for Planning and Cooperation.

In 1999, he moved back to the UN as Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority at the level of Under-Secretary-General, a post he held until December 2004. In this capacity he negotiated the Israeli withdrawal from Southern Lebanon in 2000 and established the UN line of withdrawal, the 'Blue Line'.

On 14 December 2004, he was appointed by the Secretary-General as his Special Envoy for the implementation of Security Council Resolution 1559, on Lebanon and Syria. In this capacity he negotiated the withdrawal of Syrian troops from Lebanon in 2005. He also represented the UN Secretary-General in the cease-fire negotiations during the 2006 war in Lebanon between Hezbollah and Israel.

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Nur Laiq is the author of *Talking to Arab Youth: Revolution and Counterrevolution in Egypt and Tunisia*. Nur focuses on the transitions in the Middle East and North Africa, the Israeli–Palestinian conflict and issues related to US foreign policy.

She has worked as a senior policy analyst at the International Peace Institute in New York, where she headed the Arab Youth Project. She previously worked with Labour Party members of parliament in London on foreign policy and on the European Commission's Middle East desk in Brussels. She has also worked with refugees via United Nations Refugee Agency in New Delhi. Nur has an MPhil in Modern Middle Eastern Studies from Oxford University.

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Fabrice Aidan graduated from the Écoles de Hautes Études Commerciales (HEC), Paris, School of Management in 1998. He also holds a degree in Arabic and Islamic studies from the Sorbonne University (Paris IV).

In 2000, he joined the French Ministry of Foreign Affairs and became a permanent member of the Foreign Service. He was first assigned to the Department of North Africa and the Middle East. In 2002, he served as a Diplomat at the French Mission to the United Nations in New York.

In 2003, the Government of France seconded him to the United Nations. In this capacity, he served first in Gaza/Jerusalem as the special assistant of the UN Special Coordinator for the Middle Peace Process. In 2005, he moved to UN headquarters in New York as special assistant and senior political adviser to UN Under-Secretary-General and Special Envoy of the Secretary-General, Terje Rød-Larsen, dealing with the Middle East.

In 2013, after ten years at the United Nations, he returned to the French Ministry of Foreign Affairs as senior adviser to the Director of North Africa and the Middle East.

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List of Abbreviations

AHLC	Ad Hoc Liaison Committee
ICJ	International Court of Justice
IDF	Israel Defense Forces
JLC	Joint Liaison Committee
LACC	Local Aid Coordination Committee
LAF	Lebanese Armed Forces
LAS	League of Arab States
MFO	Multinational Force and Observers
OAPEC	Organization of Arab Petroleum Exporting Countries
OIC	Organization of Islamic Cooperation
PA	Palestinian Authority
PECDAR	Palestinian Economic Council for Development and Reconstruction
PFLP	Palestinian Front for the Liberation of Palestine
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
SLA	South Lebanon Army
TIPH	Temporary International Presence in Hebron
UN	United Nations
UNDOF	United Nations Disengagement Observation Force
UNEF	United Nations Emergency Force
UNGA	United Nations General Assembly
UNIFIL	United Nations Interim Force in Lebanon
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees in the Near East
UNSC	United Nations Security Council
UNSCO	United Nations Special Coordinator
UNSCOP	United Nations Special Committee on Palestine
UNSG	United Nations Secretary-General
UNTSO	United Nations Truce Supervision Organization

A Chronology of the Arab–Israeli Conflict

The following is a chronology of the main events in, and documents on, the Arab–Israel conflict. Documents which are included in this volume are in italics.

1914–18	First World War.
24 October 1915	Letter from British High Commissioner McMahon to Hussein bin Ali, Sharif of Mecca.
16 May 1916	*Sykes–Picot Agreement.*
2 November 1917	*Balfour Declaration.*
4–7 April 1920	4 days of violent rioting against Jews in Jerusalem.
19 April 1920	Opening of the San Remo Conference.
10 August 1920	Treaty of Sèvres, or the Peace Treaty between the Ottoman Empire and the Allies.
1–7 May 1921	Major riots in Jaffa between Jews and Arabs.
28 February 1922	Great Britain issues the Unilateral Declaration of Independence of Egypt.
3 June 1922	*Churchill White Paper.*
24 July 1922	The Council of the League of Nations confirms the British mandate in Palestine.
23 August 1929	Major riots between Muslims and Jews in Jerusalem.
24 August 1929	Hebron Massacre.
23 September 1932	Abdul-Aziz al-Saud founds the Kingdom of Saudi Arabia.
1936–1939	Arab revolt in Palestine.
7 July 1937	*Peel Commission.*
17 May 1939	*MacDonald White Paper.*
1 September 1939	Beginning of Second World War.
11 May 1942	*Biltmore Program.*
22 November 1943	Independence of Lebanon.
22 March 1945	*Arab League Charter.*
8 May 1945	End of Second World War in Europe.
26 June 1945	Signature of the United Nations Charter at the San Francisco Conference.
17 April 1946	Independence of Syria.
25 May 1946	The Emirate of Transjordan becomes the Hashemite Kingdom of Jordan.
29 November 1947	*UN General Assembly Resolution 181 (the partition plan).*
14 May 1948	*Israel declares its independence.* End of the British Mandate in Palestine.
15 May 1948	Five Arab states declare war on Israel.
29 May 1948	*UN Security Council Resolution 50 and the establishment of UNTSO.*

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11 December 1948	*UN General Assembly Resolution 194.*
24 February 1949	*Egypt–Israel General Armistice Agreement.*
23 March 1949	*Lebanon–Israel General Armistice Agreement.*
3 April 1949	*Jordan–Israel General Armistice Agreement.*
27 April 1949	Opening of the Lausanne Conference convened by the United Nations' Conciliation Commission for Palestine (UNCCP).
11 May 1949	*The UN General Assembly admits Israel as UN member state through Resolution A/RES/273 (III).*
20 July 1949	*Syria–Israel General Armistice Agreement.*
12 December 1949	*UN General Assembly Resolution 303, on the Internationalization of Jerusalem.*
24 April 1950	Jordan annexes the West Bank and East Jerusalem.
5 July 1950	*Israel votes the Law of Return.*
20 July 1951	King Abdullah I of Jordan in assassinated in the vicinity of al-Aqsa Mosque in Jerusalem by a Palestinian gunman.
23 July 1952	Military coup in Egypt by the Free Officers Movement.
18 June 1953	The Revolutionary Command Council (RCC) abolishes the monarchy and proclaims the Republic of Egypt.
23 June 1956	Gamal Abdel Nasser is elected President of the Republic of Egypt.
26 July 1956	President Nasser of Egypt nationalizes the Suez Canal.
29 October 1956	Suez Crisis. Israel invades Sinai (Operation Kadesh) with the covert assent of France and the UK.
30 October 1956	France and the UK launch military operations against Egypt.
5 November 1956	*UN General Assembly Resolution 1000 (Suez Crisis).*
7 November 1956	*UN General Assembly Resolution 1001 (Suez Crisis).*
8 March 1957	Israel withdraws its last forces from the Sinai peninsula, ending the Suez Crisis.
14 July 1958	Military coup against Iraqi monarchy.
3 February 1964	The Palestinian Liberation Organisation (PLO) is established by the Arab League in Cairo, with Ahmed Shuqeiri as its leader.
16 May 1967	President Nasser asks the United Nations Emergency Force (UNEF) to leave Sinai and the Gaza Strip, where it had been engaged in peacekeeping functions since the 1956 Sinai conflict.
22 May 1967	Egypt announces a blockade against Israeli shipping in the Strait of Tiran.
5 June 1967	'Six Day War': Israel launches military strikes on Egypt, Syria, and Jordan. After six days of fighting, Israel captures the Sinai peninsula and Gaza Strip from Egypt, the West Bank and East Jerusalem from Jordan, and about 1,150 square kilometres of Syrian territory on the Golan Heights.
1 September 1967	*Khartoum Resolution of the three 'Noes'.*
22 November 1967	*UN Security Council Resolution 242.*
21 March 1968	The battle of Karameh between Israel and Fatah and Jordanian forces. First direct military confrontation between Israeli and Palestinian forces.
17 July 1968	*The Palestinian National Charter.*

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2 February 1969	Yasir Arafat, leader of the Fatah Party, elected chairman of the PLO.
8 March 1969	President Nasser denounces the 1967 war cease-fire, marking the beginning of the War of Attrition against Israel.
25 September 1969	Creation of the Organization of the Islamic Conference (OIC).
3 November 1969	*Cairo Agreement.*
9 December 1969	*Rogers Plan.*
7 August 1970	War of Attrition cease-fire.
September 1970	'Black September' in Jordan. The PLO is expelled from Jordan.
28 September 1970	President Gamal Abdel Nasser dies and is replaced by Vice President Anwar al-Sadat.
16 November 1970	Syria's Minister of Defense, Hafez al-Assad, leads the 'Correctionist Movement' military coup.
12 March 1971	Hafez al-Assad is elected President of Syria in a referendum.
6 October 1973	October or Yom Kippur War. Egypt and Syria attack Israeli forces in the Sinai and the Golan Heights.
17 October 1973	OAPEC decides on an oil embargo.
22 October 1973	*UN Security Council Resolution 338.*
18 January 1974	*First Egyptian–Israeli Disengagement of Forces Agreement.*
31 May 1974	*Israel–Syria Separation of Forces Agreement.*
26–29 October 1974	Arab summit at Rabat declares the PLO the 'sole legitimate representative of the Palestinian people'.
28 October 1974	*Arab League Resolution on Palestine Liberation Organization.*
13 November 1974	PLO Chairman Arafat addresses the UN General Assembly in Geneva.
22 November 1974	*UN General Assembly Resolutions 3236 and 3237* (*PLO*).
13 April 1975	Beginning of the Lebanese Civil War.
4 September 1975	*Second Egyptian–Israel Disengagement of Forces Agreement.*
10 November 1975	*UN General Assembly Resolution 3379 (Zionism–Racism).*
May 1976	Lebanese President Suleiman Frangieh invites Syrian troops into the country.
17 May 1977	Menachem Begin's Likud Party wins Israeli national elections after 29 years of Labor Party dominance.
9 November 1977	In a speech in Cairo, President Anwar al-Sadat announces his readiness to travel to Israel.
20 November 1977	*Anwar al-Sadat and Menachem Begin speeches to the Knesset in Jerusalem.*
28 December 1977	*Prime Minister Begin's Knesset speech on Home Rule.*
14 March 1978	Operation Litany—Israel invades South Lebanon.
19 March 1978	*UN Security Council Resolutions 425 and 426* (*Lebanon*).
17 September 1978	*Camp David Accords.*
2–5 November 1978	Arab League Summit in Baghdad. Egypt suspended from the Organization. Its headquarters to be moved to Tunis.

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10 December 1978	President Sadat and Prime Minister Begin are awarded jointly in Oslo the Nobel Peace Prize.
16 January 1979	Shah Mohamed Reza Pahlavi leaves Iran after months of domestic turmoil.
26 March 1979	*Signature of the Egypt–Israel Peace Treaty in the White House.*
1 April 1979	Ayatollah Khomeini proclaims the Islamic Republic of Iran after a national referendum.
2 April 1979	Prime Minister Begin visits Cairo.
February 1980	Israel and Egypt exchange Ambassadors for the first time.
30 June 1980	*UN Security Council Resolution 476 (Jerusalem).*
30 July 1980	The Knesset votes the Basic Law on Jerusalem.
20 August 1980	*UN Security Council Resolution 478 (Jerusalem).*
3 August 1981	*Signature of the Protocol to the Treaty of Peace between Israel and Egypt, establishing the Multilateral Force and Observers (MFO).*
7 August 1981	*Fahd Plan.*
6 October 1981	Assassination of President Sadat. Vice President Mubarak succeeds him.
14 December 1981	The Israel Knesset passes a law annexing the Golan Heights.
17 December 1981	*UN Security Council Resolution 497 (Golan Heights).*
25 April 1982	Israel completes its pull back from Sinai with the exception of Taba.
6 June 1982	Israel launches Operation 'Peace in Galilee'; beginning of the Lebanon war.
1 September 1982	*Reagan Peace Plan.*
9 September 1982	*Fez Peace Initiative.*
14 September 1982	Assassination of Lebanese President Beshir Gemayel.
17 September 1982	*UN Security Council Resolution 520 (Lebanon).*
17 May 1983	Israel and Lebanon sign a peace agreement.
19 February 1986	King Hussein of Jordan severs ties with the PLO.
11 April 1987	*London Agreement.*
21 May 1987	*Lebanon's parliament abrogates the 1969 Cairo agreement with the PLO and cancels the 17 May 1983 agreement with Israel.*
9 December 1987	The first Palestinian uprising (intifada) against Israeli rule in the West Bank and Gaza begins.
4 March 1988	*Shultz Plan.*
31 July 1988	*Jordan's disengagement from the West Bank.*
18 August 1988	*Hamas Charter.*
15 November 1988	*Palestinian Declaration of Independence.*
14 December 1988	The US recognizes the PLO. President Reagan authorizes the State Department to enter into a dialogue with the organization.
26 February 1989	*Israel and Egypt sign agreement returning Taba to Egypt.*
23 May 1989	President Mubarak of Egypt attends the Arab League summit in Casablanca marking the readmission of Egypt to the Arab League.
22 October 1989	*Ta'if Agreement.*

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9 November 1989	Fall of the Berlin Wall.
12 March 1990	The Arab League decides to return its headquarters to Cairo.
20 June 1990	President G.H. Bush suspends dialogue with the PLO.
2 August 1990	Iraq invades Kuwait.
17 January 1991	The US launches Operation Desert Storm to liberate Kuwait.
30 April 1991	The Lebanese parliament orders the disbanding of all militias by this date. Hezbollah remains active and the South Lebanon Army (SLA) refuses to disband.
26 August 1991	The Lebanese parliament grants an amnesty for all crimes committed during the civil war, 1975–90.
18 October 1991	*Invitation to the Madrid Peace Conference. The US letters of assurance to the Palestinians and Israelis.*
30 October 1991	The Middle East Peace Conference opens in Madrid. Face-to-face bilateral talks for the first time between Israeli and Arab delegations, as well as with a joint Palestinian-Jordanian delegation.
16 December 1991	*UN General Assembly Resolution 46/86* (*Zionism-Racism*).
26 December 1991	Formal dissolution of the USSR.
23 June 1992	Israeli Labor Party wins the elections. Yitzhak Rabin becomes Prime Minister.
January 1993	Secret Israeli–PLO talks begin in Oslo, and develop into full-scale official negotiations in May that year.
20 August 1993	Secret signing of the Oslo Accords in Oslo by Israeli Foreign Minister Peres, Palestinian Chief Negotiator Qorei and Norwegian Foreign Minister Holst.
9 September 1993	*Israel and the PLO exchange letters of recognition.*
13 September 1993	*Signature of the Declaration of Principles on Interim Self- Government Agreements in Washington.*
14 September 1993	*Israel–Jordan Common Agenda.*
11 October 1993	*Letter from Israel's Foreign Minister Peres to Norway's Foreign Minister Holst on the Status of East Jerusalem.*
5 November 1993	*Establishment of the AHLC.*
25 February 1994	An Israeli opens fire at the Ibrahimi Mosque or Tomb of the Patriarchs in Hebron, killing 29 Palestinians.
18 March 1994	*UN Security Council Resolution 904 on the Hebron Massacre.*
29 April 1994	*Protocol on Economic Relations between the State of Israel and the PLO (Paris Protocol).*
4 May 1994	*Gaza–Jericho Agreement.*
18 May 1994	The IDF withdraws from Gaza city and Jericho.
1 July 1994	Yasir Arafat arrives in Gaza.
25 July 1994	*Washington Declaration (Jordan–Israel peace talks).*
29 August 1994	*Agreement on Preparatory Transfer of Power and Responsibilities.*

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13 September 1994	*Oslo Declaration.*
14 October 1994	Prime Minister Rabin, Chairman Yasir Arafat, and Foreign Minister Peres are awarded the Nobel Peace Prize.
26 October 1994	*Israel–Jordan Peace Treaty.*
1 November 1994	*Casablanca Declaration.*
30 November 1994	*Establishment of the LACC.*
10 December 1994	Official ceremony to present Nobel Peace Prize to Yizhak Rabin, Shimon Peres, and Yasir Arafat.
28 September 1995	*Israeli–Palestinian Interim Agreement on the West Bank and Gaza Strip: Oslo II.*
31 October 1995	*Beilin–Abu Mazen Agreement.*
4 November 1995	Prime Minister Yitzhak Rabin assassinated. Shimon Peres becomes Prime Minister.
20 January 1996	Yasir Arafat is elected president of the Palestinian Authority (PA).
25 February–4 March 1996	A series of suicide attacks by Hamas in Israel kill more than 60.
13 March 1996	*Sharm el-Sheikh Summit of Peacemakers Final Statement.*
11 April 1996	Israel launches Operation Grapes of Wrath in Lebanon.
24 April 1996	The Palestinian National Council (PNC) cancels the clauses of the Palestinian Charter that are contrary to the recognition of Israel.
26 April 1996	*Israel–Lebanon cease-fire understandings.*
4 May 1996	*Letter from Chairman Arafat to Prime Minister Peres on the Amendment to Palestinian National Charter.*
9 May 1996	*TIPH Agreement I.*
29 May 1996	Benjamin Netanyahu elected Prime Minister of Israel.
4 September 1996	*First meeting of Prime Minister Netanyahu and Chairman Arafat.*
28 September 1996	*UN Security Council Resolution 1073.*
17 January 1997	*Hebron Protocol.*
21 January 1997	*TIPH II agreement.*
21 January 1997	*Israel–Jordan QIZ agreement.*
25 September 1997	Israel's assassination attempt on Hamas leader Khaled Meshaal in Amman.
23 October 1998	*Wye River Agreement signed by Arafat and Netanyahu.*
14 December 1998	The Palestinian National Council convenes in the presence of President Clinton to reaffirm the annulling of clauses of the Palestinian Charter which denied Israel's right to exist.
7 February 1999	King Hussein of Jordan dies. Abdullah II succeeds him.
17 May 1999	Ehud Barak elected Prime Minister of Israel.
4 September 1999	*Sharm el-Sheikh Memorandum.*
5 October 1999	*Protocol Concerning Safe Passage.*

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15 December 1999	President Clinton hosts summit meeting with Israel's Prime Minister Barak and Syrian Foreign Minister al-Shara, followed by rounds of peace talks in Shepherdstown, West Virginia, in January 2000.
5 March 2000	*Government of Israel's resolution to withdraw from Lebanon.*
26 March 2000	Bill Clinton and Hafez al-Assad summit in Geneva.
17 April 2000	*Letter from Israel's Foreign Minister to UN Secretary-General on Israel's withdrawal from Lebanon.*
22 May 2000	*Report of the UN Secretary-General on Implementation of Resolutions 425 and 426.*
24 May 2000	IDF completes pull-out from Lebanon.
10 June 2000	President Hafez al-Assad dies.
16 June 2000	*Second Report of the UN Secretary-General on Implementation of Resolutions 425 and 426.*
18 June 2000	*The UN Security Council confirms Israel's withdrawal from Lebanon in a Presidential Statement.*
10 July 2000	Bashar al-Assad is elected President of Syria in a nationwide referendum.
11–25 July 2000	Camp David II negotiations between Ehud Barak and Yasir Arafat.
25 July 2000	*Camp David Statement.*
28 September 2000	Likud leader Ariel Sharon's visit to the Temple Mount/Haram al-Sharif, prompting major Palestinian riots. Second Palestinian uprising (al-Aqsa Intifadah) begins.
7 October 2000	Three Israeli soldiers abducted by Hezbollah along the Blue Line.
17 October 2000	*Joint Statements at the Conclusion of the Middle East Peace Summit in Sharm el-Sheikh.*
10 December 2000	Prime Minister Barak resigns and calls for early elections.
23 December 2000	*Clinton Parameters.*
21–27 January 2001	Taba Talks.
27 January 2001	*Taba Statement.*
27 January 2001	*Moratinos Non-Paper on Taba Negotiations.*
6 February 2001	Ariel Sharon elected Prime Minister of Israel.
19 April 2001	*Jordanian–Egyptian Proposal.*
30 April 2001	*Mitchell Report.*
14 June 2001	*Palestinian–Israeli Security Implementation Work Plan (Tenet Cease-Fire Plan).*
17 October 2001	Assassination of Israel tourism minister Rehavam Zeevi in Jerusalem by militants of the PFLP.
17 February 2002	Thomas Friedman of the *New York Times* publishes interview with Crown Prince Abdullah of Saudi Arabia on his peace initiative.
12 March 2002	*UN Security Council Resolution 1397.*
28 March 2002	*Beirut Arab League Summit Declaration on the Arab Peace Initiative.*

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29 March 2002	Israel launches operation Defense Shield, placing Arafat under siege in his Ramallah compound, the Muqata.
30 March 2002	*Security Council Resolution 1402.*
10 April 2002	*European Parliament votes to suspend Euro-Israeli association agreement.*
12 April 2002	The Battle of Jenin.
19 April 2002	*UN Security Council Resolution 1405 on Jenin.*
29 May 2002	*Basic Palestinian Law.*
24 June 2002	President G.W. Bush's Rose Garden speech.
27 July 2002	*Ayalon–Nusseibeh Statement of Principles.*
31 July 2002	*Report of the UN Secretary-General prepared pursuant to UN General Assembly Resolution ES-10/10 (Jenin Report).*
17 January 2003	*Outcomes of London Conference on Palestinian Reform.*
19 March 2003	US and UK invasion of Iraq.
19 March 2003	Yasir Arafat appoints Mahmoud Abbas as the first Prime Minister of the Palestinian Authority.
30 April 2003	*Performance-Based Road Map to a Permanent Two-State Solution to the Israeli–Palestinian Conflict.*
25 May 2003	*Israel's response to Road Map.*
4 June 2003	A summit is convened by President Bush in Aqaba, Jordan with Prime Ministers Sharon and Abbas, hosted by King Abdullah II.
29 June 2003	*Palestinian cease-fire statements.*
6 September 2003	Prime Minister Mahmoud Abbas resigns.
11 September 2003	*The Israeli cabinet approves removal of Yasir Arafat from the West Bank.*
5 October 2003	Ahmed Qorei appointed Prime Minister of the Palestinian Authority.
21 October 2003	*UN General Assembly Resolution ES-10/13 (Barrier).*
19 November 2003	*UN Security Council Resolution 1515 (Quartet's Road-Map).*
24 November 2003	*Report of the UNSG pursuant to Resolution ES-10/13 (Barrier).*
1 December 2003	*The Geneva Accord: A Model Israeli–Palestinian Peace Agreement.*
8 December 2003	*UN General Assembly Resolution ES-10/14 (Barrier).*
18 December 2003	*Prime Minister Sharon's address at the Fourth Herzliyah Conference.*
14 April 2004	*Exchange of letters between Prime Minister Sharon and President Bush.*
18 April 2004	*The Disengagement Plan: General Outline.*
18 April 2004	*Rice–Weisglass Letter of Understanding.*
19 May 2004	*UN Security Council Resolution 1544.*
19 May 2004	*Letter from President Bush to King Abdullah II of Jordan.*
6 June 2004	*Israeli Cabinet Resolution Regarding the Disengagement Plan.*
9 July 2004	*Advisory Opinion of the ICJ on the Barrier.*
12 July 2004	*Olga Document.*
2 August 2004	*UN General Assembly Resolution on the ICJ Advisory Opinion on the Barrier.*

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2 September 2004	*UN Security Council Resolution 1559 (Lebanon).*
11 November 2004	Yasir Arafat dies. The Executive Committee of the PLO elects Mahmoud Abbas as its leader.
14 December 2004	*Agreement between Egypt and Israel on Qualifying Industrial Zones.*
9 January 2005	Mahmoud Abbas elected President of the Palestinian Authority.
14 February 2005	Assassination of former Lebanese Prime Minister Rafic Hariri.
12 March 2005	*Aleppo Understandings.*
7 April 2005	UN Security Council Resolution 1595 establishes an International Independent Inquiry Commission (UNIIC) into the assassination of Prime Minister Hariri.
26 April 2005	Syria ends its military presence in Lebanon.
17 August–22 September 2005	Israel pulls out of the Gaza Strip.
15 November 2005	*Agreement on Movement and Access.*
4 January 2006	Israeli Prime Minister Sharon is incapacitated. Ehud Olmert becomes interim Prime Minister.
25 January 2006	Hamas wins Palestinian Legislative Council elections.
30 January 2006	*Quartet Statement on Palestinian Legislative elections.*
16 February 2006	Ismail Haniyeh of Hamas appointed Prime Minister.
17 March 2006	*Hamas Political Program.*
28 March 2006	Kadima leader Ehud Olmert wins Israeli elections.
29 March 2006	Palestinian Government led by Hamas sworn in.
30 March 2006	*Quartet Statement on Hamas.*
11 May 2006	*Palestinian Prisoners' Document.*
17 May 2006	*UN Security Council Resolution 1680 (Lebanon/Syria).*
25 June 2006	Abduction of Israeli soldier Gilad Shalit. Israel launches Operation Summer Rains in the Gaza Strip.
28 June 2006	*National Conciliation Document of the Prisoners.*
12 July 2006	Israel–Hezbollah war starts after Hezbollah attacks an Israeli patrol along the Blue Line, killing three soldiers and kidnapping two.
25 July 2006	*Seven-Point Plan of Prime Minister Siniora.*
11 August 2006	*UN Security Council Resolution 1701.*
14 August 2006	Cessation of hostilities between Israel and Lebanon.
8 February 2007	*Mecca Accord for Palestinian National Unity Government.*
17 March 2007	Palestinian Government of Unity sworn in.
17 March 2007	*Program of Palestinian Unity Government.*
29 March 2007	*Riyadh Declaration.*
15 May 2007	*Haifa Declaration.*
30 May 2007	UN Security Council Resolution 1757 establishes Special Tribunal for Lebanon (STL).
10 June 2007	Violent confrontations between Hamas and Fatah in the Gaza Strip.

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13 June 2007	Shimon Peres is elected President of Israel by the Knesset.
14 June 2007	President Abbas dismisses Prime Minister Haniyeh and declares a state of emergency.
15 June 2007	Hamas takes control over the Gaza Strip in a coup, after several days of violent battles with Fatah.
15 June 2007	Salam Fayyad appointed Prime Minister of the Palestinian Authority.
30 October 2007	*UN Provisional Geographic Definition of the Shebaa Farms Area.*
27 November 2007	*Annapolis Joint Understanding.*
7 May 2008	Hezbollah militants take control of areas of Beirut.
21 May 2008	Doha agreement between Lebanese leaders brokered by Qatar.
21 May 2008	Israel and Syria announce holding indirect talks through Turkish mediation.
30 July 2008	Prime Minister Olmert announces he is not seeking re-election.
15 October 2008	Establishment of diplomatic relations between Syria and Lebanon.
16 December 2008	Last meeting of Prime Minister Olmert and President Abbas.
16 December 2008	*UN Security Council Resolution 1850 on Annapolis process.*
27 December 2008	Israel launches Operation 'Cast Lead' against Hamas.
8 January 2009	*UN Security Council Resolution 1860 on a Gaza cease-fire.*
18 January 2009	*Gaza cease-fire.*
20 February 2009	President Peres tasks Netanyahu to form a Cabinet following 10 February elections.
1 March 2009	Opening of the Special Tribunal for Lebanon (STL).
31 March 2009	Benjamin Netanyahu is sworn in as Prime Minister.
4 June 2009	*President Obama's Cairo Speech.*
14 June 2009	*Prime Minister Netanyahu's Speech at Bar Ilan University.*
25 August 2009	*Ending Occupation, Establishing the State: Fayyad Plan.*
25 September 2009	*Report of the United Nations fact finding mission on the Gaza conflict: the Goldstone report.*
31 May 2010	Gaza Flotilla Incident.
25 January 2011	Beginning of the Egyptian uprising.
11 February 2011	President Mubarak of Egypt resigns.
15 March 2011	Beginning of the Syrian uprising.
4 May 2011	In Cairo, Palestinian Authority President Abbas and Hamas leader Meshal sign a reconciliation agreement, which calls, *inter alia*, for elections in 2012.
29 July 2011	Formation of the Free Syrian Army (FSA).
2 September 2011	*Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident.*
18 September 2011	*Chair's Summary of the AHLC on Palestinian Institutions' readiness for statehood.*

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23 September 2011	*President Abbas's speech to the UN General Assembly on UN membership.*
31 October 2011	Palestine becomes a member of UNESCO.
6 February 2012	In Doha, Palestinian Authority President Abbas and Hamas leader Meshal sign another reconciliation agreement after the failure to implement the Cairo deal.
20 June 2012	Mohamed Morsi is sworn in as President of Egypt.
14 November 2012	Israel launches Operation 'Pillar of Defense' in Gaza.
21 November 2012	*Gaza War II: Israel and Hamas unilateral cease-fire.*
29 November 2012	*President Abbas's speech to the UN General Assembly on Palestine's status at the United Nations.*
4 December 2012	*UN General Assembly Resolution 67/19: Status of Palestine in the United Nations.*
22 January 2013	Likud Party leader Netanyahu wins parliamentary elections.
13 April 2013	Prime Minister Salam Fayyad resigns.
6 June 2013	Rami Hamdallah is sworn in as Palestinian Prime Minister.
20 June 2013	Rami Hamdallah resigns from his post.
30 June 2013	Massive demonstrations in Egypt against President Morsi.
3 July 2013	Egyptian Army removes President Morsi from power.
30 July 2013	Resumption of Israeli–Palestinian peace talks in Washington facilitated by President Obama and Secretary of State Kerry.
19 September 2013	Rami Hamdallah forms a new Palestinian Government.
16 January 2014	Opening in The Hague of the trial of the Special Tribunal for Lebanon (STL).
23 April 2014	Fatah and Hamas announce in Gaza a new reconciliation agreement calling for the formation of a national unity Government and the holding of elections.
24 April 2014	The Israeli Cabinet suspends peace talks with the Palestinians in protest to the Gaza agreement.
2 June 2014	Palestinian unity government headed by Prime Minister Rami Hamdallah is sworn in.
3 June 2014	Bashar al-Assad is re-elected President of Syria in an election whose legitimacy was widely contested.
8 June 2014	Field Marshall Abdel Fattah a-Sissi is sworn in as President of the Arab Republic of Egypt following presidential elections held 26–28 May.
12 June 2014	Three Israeli teenagers were abducted in the West Bank. The IDF found their bodies on 30 June in the vicinity of Hebron. In retaliation, Israel launched attacks against targets of Hamas and Palestinian Islamic Jihad.
2 July 2014	A Palestinian teenager was abducted and killed in Jerusalem by a group of Israelis. This triggered a series of violent clashes.
7 July 2014	Israel launches operation 'Protective Edge' against Hamas in the Gaza Strip in retaliation to rocket attacks.
26 August 2014	A ceasefire, brokered by Egypt, was reached to end hostilities between Palestinian factions and Israel in Gaza.

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The Crooked Course: Step by Step on the Path to Peace

INTRODUCTION

As Immanuel Kant observed, "out of the crooked timber of humanity no straight thing was ever made." And the Middle East peace process is no exception. It runs a crooked course. This work provides a paper trail of the meandering and rocky path of the peace process. Relevant documents related to the Arab–Israeli conflict over the past century (since the Sykes–Picot Agreement of 1916) are compiled in this book. It provides an annotated and chronological overview of attempts to make peace in one of the most difficult and protracted conflicts in the world, and it includes a full set of accompanying maps specially made for this edition.

The sheer volume of such a work raises the critical problem of how to present the documents in a way that facilitates their accessibility and understanding. A simple chronological ordering would miss important connections between the documents, which are thus better grouped by common theme. To this end, we have divided the volume into five thematic Parts. Part I compiles documents related to the formal peace agreements between Israel and the Palestinians, as well as those related to Israel's unilateral disengagement from Gaza. The documents in Part II relate to the many informal peace proposals and ideas offered over the years that have served to contribute to more official processes at a later date. Part III compiles the many important United Nations documents specifically related to the question of Palestine. Part IV sets the Israeli–Palestinian issue in a broader context, providing regional papers going back a century, up to the latest documents. Finally, Part V compiles Israeli and Palestinian domestic documents relevant to the quest for peace in the Middle East.

Grouping the documents by theme highlights the evolution of particular aspects of the conflict and the peace process over time. When examined as a group, these documents provide valuable insights on the events, conditions, and actions that have been most important in influencing the different phases of the peace process.

For guidance, the reader will find a chronological overview of all the documents and key events.

ON PART I: PEACE AGREEMENTS AND THE DISENGAGEMENT FROM GAZA

Nothing about the quest for peace in the Middle East has been simple or easily attained. Merely bringing Palestinians and Israelis together was a feat that took decades to achieve. Despite all the efforts exerted by not only the principal parties, but also local actors, regional neighbors, and international players, agreements between the two sides

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have been scarce. This Part chronicles the rare moments when both Israeli and Palestinian negotiators put pen to paper in an effort to resolve a conflict that has seemed intractable.

Part I begins with the Oslo peace talks, which in 1993 produced the Declaration of Principles (DoP) and the mutual recognition of the State of Israel and the Palestine Liberation Organization (PLO) as the legitimate representative of the Palestinian people. These two agreements formed the basis for all subsequent talks between the parties.

In 1992, as the director of the Norwegian research institute Fafo, I initiated, together with then member of Knesset Yossi Beilin, secret talks between him and local Palestinian leader Faisal Husseini, at the American Colony Hotel in Jerusalem. These talks, which were facilitated by Fafo and the Foreign Ministry of Norway, reached a dead end later that year. The Norwegians realized that without involving the exiled and outlawed Palestinian leadership in Tunis, nothing could be accomplished. At the time, both Israeli and American citizens were forbidden to engage with any member of the PLO. In December 1992, I flew to Tunis to meet for the first time with PLO Chairman Yasir Arafat. In that meeting in his villa, in the darkness of the early morning hours, he authorized the head of Fatah's financial wing, Ahmed Qorei (alias Abu Ala), to travel to Oslo for secret talks facilitated by Fafo in cooperation with the Norwegian Foreign Ministry. The first meeting took place at Borregaard Manor outside Oslo, in January 1993.

From January to May 1993, secret talks were conducted as a pre-negotiation phase, in parallel to the Madrid process taking place in Washington. The goals of pre-negotiations in Oslo were twofold: to build trust between the Palestinian and Israeli representatives; and to explore possible parameters of an agreement. In order to reach the first goal, the exercise was restricted to a small group, willing to engage in secret intense interaction over a lengthy period. Unlike the massive delegations in Washington, the delegations in Oslo were never larger than three to five people on each side, with continued interaction often from dawn to dusk.

In Oslo, the Palestinians were represented from day one by a delegation of the PLO, handpicked by its chairman, Yasir Arafat. The rationale behind this unprecedented step was that the Norwegians had discovered that the PLO was already controlling every detail, albeit invisibly, of the bilateral and multilateral talks in Washington. Furthermore we believed that if the PLO and Yasir Arafat were not directly involved in the talks, they still had the ability and the will to block any agreement. Allowing others to reach an agreement would be tantamount to political suicide by the PLO. Therefore, it was necessary to have them at the table. Without them, no agreement could be reached.

The pre-negotiation phase ended on 1 May 1993. The talks had reached a point where both parties believed that the other was negotiating in good faith and that an agreement had to take the shape of a declaration of principles. On that date, the head of the Palestinian negotiation team, Ahmed Qorei, invited me for a walk in the hills above Oslo. He made it clear—in the most explicit of words—that the PLO would not continue into a final round of talks unless the Israelis "upgraded" their delegation to high-level officials. Up to this point, the Israelis were represented by two academics (Ron Pundak and Yair Hirschfeld) who did not hold any formal position in the

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government. In the following days, I flew to Israel to convey the request to Yossi Beilin, then Deputy Foreign Minister. Shortly afterwards, Foreign Minister Shimon Peres dispatched the Director General of the ministry, Uri Savir, and the head of the ministry's legal department, Joel Singer, to Oslo. The Norwegians had, until then, seen the secret talks in Oslo and their potential outcome only as possible inputs to the negotiations in Washington. We were puzzled—and pleasantly surprised—to realize that the parties now wanted to negotiate the full deal under the Oslo framework.

Indeed, in the spring of 1993 the parties started to conduct proper negotiations in Oslo—out of the public eye—rather than through the formal process in Washington. Within four months, the Declaration of Principles was initialed in a secret ceremony in the Government Guest House in Oslo. This was followed by a new set of secret negotiations in Paris, facilitated by the Norwegian team (Johan Jorgen Holst, Jan Egeland, Mona Juul, and myself). The outcome was the mutual recognition of the State of Israel and the Palestine Liberation Organization, which paved the way for the formal signing of the Oslo Accords on the White House lawn on 13 September 1993.

The Declaration of Principles was based on the approach that the easiest issues should be resolved first, with remaining issues to be addressed later, step-by-step. A Palestinian Authority for self-rule would be established, first gaining control over Gaza and Jericho, and then gradually expanding into the West Bank. The details of the expansion were to be hammered out in the so-called Oslo II Agreement, signed in Cairo on 28 September 1995.

As unique and effective as this approach proved to be, the Oslo Accords would not have been possible without the dramatic changes taking place within the international system at the time. The PLO had been financially dependent on the states of the Arab Gulf and the Communist bloc. The collapse of the Soviet Union and Arafat's support of Saddam Hussein during the Gulf War of 1991 resulted in the collapse of funding for the PLO and an end to remittances to Palestinian families in Gaza and the West Bank. Simultaneously, the first Intifada between 1987 and 1993 and the emergence of a new local leadership in Gaza and the West Bank created a threat to the leadership of the PLO in exile in Tunis. The organization needed desperately to regain its financial footing, as well as its political stature. These were major incentives to move the Organization into what was to become the Oslo process.

The Israeli leadership also had its reasons to come to the negotiating table. The rise of satellite television channels, such as CNN, beamed live images around the world of Israeli soldiers armed to the teeth combating stone-throwing kids in Gaza and the West Bank. Support for the government of Israel dropped dramatically in Europe and at home. Israelis began to feel that they were losing the moral high ground. Israeli leaders saw that using traditional military means to combat the Intifada came at a high political and moral cost. They too were in search of a political way out. In short, the Oslo channel came precisely at the right time, providing a lifeline for both the Israeli and Palestinian leaderships.

The implementation of the Declaration of Principles started in earnest in 1994, with Yasir Arafat's spectacular arrival in Gaza and the rapid establishment of the Palestinian Authority. I had the pleasure of welcoming him on behalf of UN Secretary-General Boutros Boutros-Ghali, as his newly appointed Special Coordinator for the Occupied

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Territories and Personal Representative to the PLO and the Palestinian Authority at our new headquarters in Gaza city. The PLO had regained its uncontested leadership, and the Palestinian Authority received a massive financial boost with the influx of donor money from across the world. Israel received a moral boost as a large number of countries formally recognized its existence and established diplomatic relations.

A hallmark of the Declaration of Principles was the establishment of a gradual approach to resolving the conflict. *Gradualism* now became the keyword for describing the peace process. By breaking the overall goal of peace into manageable sections that could be addressed in sequence, the Oslo process allowed for progress to be made and trust to develop on less contentious issues before tackling more controversial topics like Jerusalem, borders, security arrangements, and refugees, which could threaten to derail any talks.

One of the principal advantages of the step-by-step or gradualist approach was that it enabled the parties to reach compromises through ongoing dialogue and interaction with each other by starting with the easiest issues and leaving the hardest for last. It allowed for an incremental change in perceptions and political positions. Although gradualism allowed success to be achieved in a variety of areas, moving the process forward, at each stage, depended on the parties taking the bold steps necessary to fulfill their respective commitments. The main weakness was slow movement in implementation, with progress falling behind agreed upon timelines. This led to periodic disillusionment and back-sliding.

A recurrent problem was that the parties had failed to agree on a mechanism to penalize non-compliance. This critical deficiency undermined progress. As leaders and the political climate changed, so too did the resolve to implement.

Successful gradualism required the use of ambiguous language on the most contentious issues: Jerusalem, borders, security, and refugees. The successive Israeli governments and the Palestinian leadership had substantially different views on the final status of all four of these issues. The language contained within the Oslo documents, as well as subsequent agreements, provides room for interpretation. Either side could claim that the text represents their interests. This allowed leaders to go home to their respective constituents and retain popular support.

Another practice that proved effective was the use of the annexes attached to agreements to flesh out disruptive details, or to substantially water down the impact of certain commitments made within the body of the text. In many cases the annexes are exhaustively long and detailed but are rarely read by the public, affording the leaders political space to make agreements that might otherwise face public criticism.

The three Israeli Prime Ministers who were in office from 1993 to 1999—Rabin, Peres, and Netanyahu—approached the challenges of peace through a concept of gradualism, postponing the tricky final status issues. Barak, who took office in 1999, was the first Israeli Prime Minister to address the final status head-on with a *"totalist"* approach (read below).

While the Oslo process was based on the concept of *gradualism*, characterized by bilateral negotiations—facilitated by a third party—and cumulative small steps demonstrating good faith, Ariel Sharon eventually took a contrary approach through *"uncompromising unilateralism"*. The day after he won the election in February 2001,

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he invited me to meet him at the King David Hotel in Jerusalem. During the course of the conversation, he surprisingly asked what I would do with the peace process if I were him. I had just re-read his autobiography, *Warrior*, and answered: "Both as a soldier and as a politician, you have a history of being bold, daunting, daring and making surprise moves. In that spirit, I would suggest that you dismantle the settlements and pull your troops completely out of Gaza." For a minute I worried that this would anger him, but he answered very calmly. "I cannot do it." I asked why. He said: "Because of the harbor." I replied, rather perplexed: "But there is no harbor in Gaza." He said: "That's not the point. They could build one if we left Gaza." Then I realized that, contrary to common opinion, Sharon had no ideological inhibitions about leaving Gaza. His concerns were only about security. This gave me high hopes that he would eventually do it. Three years of stalemate were to follow. And then in December 2003, out of the blue, Sharon made the sweeping and stunning pronouncement that Israel would leave Gaza and end its occupation of the Strip.

Ariel Sharon deserves praise for withdrawing from Gaza. But his unilateral move undermined the possibility of peaceful relations between the inhabitants of the Gaza Strip and Israel. The PLO and the Palestinian Authority were sidelined. They could not claim credit for the move, and thus had scant motivation for supporting it. Instead, militants in Gaza and the West Bank harvested all the benefits. The Disengagement plan undermined those on the Palestinian side who claimed that the negotiating table was a more efficient tool than the barrel of a gun in order to resolve the conflict.

ON PART II: PEACE PROPOSALS AND IDEAS

The formal agreements covered in Part I represent the conclusions of long and complex diplomatic processes. Part II encompasses proposals and ideas that contributed to breaking taboos and changing opinions that paved the way for precedent-setting agreements.

In the late 1970s and 1980s several plans and initiatives were put forward which maintain relevance for the future of the peace process. One idea was a comprehensive and unified Arab approach which was first proposed in the Fahd Plan (1981), and later refined in the Arab Peace Initiative of 2002. The latter peace proposal promoted by then Saudi Crown Prince Abdullah al-Saud represented a unified shift in the Arab States' approach to Israel. Where there was once rejection, the Arab peace initiative created the possibility of universal recognition of the State of Israel. All 57 countries of the Organization of Islamic Cooperation (OIC) endorsed the initiative.

The aftermath of the Gulf War of 1991 opened new opportunities to address the complex issue of peace in the Middle East. This was the backdrop for the groundbreaking Madrid Peace Conference, convened by the United States and the Soviet Union. It raised new hopes for peaceful resolution to the enduring conflicts of the region. The conference created an unprecedented platform for peace talks, based on the principle of "land for peace". The Israelis would have to cede land to their Arab adversaries in return for peace and security. The Madrid formula for organizing such talks followed a

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two-track approach: bilateral negotiations in Washington; and the formation of several multilateral working groups to address specific issues such as water, refugees, the economy, etc. It is worth noting that the PLO was not accepted at the negotiating table. Instead the Palestinians were represented by a joint delegation of Jordanian officials and prominent Palestinians, who allegedly were not associated with the PLO. In stark contrast to the Oslo process, the Washington talks under the Madrid formula were public and in the constant glare of the media. This resulted in the parties continuously posturing to win the favor of the complex power structures that they reported to, as well as of domestic public constituencies. However, Madrid broke the taboo of direct bilateral talks between Arabs and Israelis. Madrid failed as a process, but succeeded as a spectacular event for creating hope, and formed a springboard for the subsequent secret Oslo talks.

As noted in the comments on Part I, Oslo and all subsequent agreements were embraced by the three Israeli Prime Ministers before Ehud Barak took office in 1999. As opposed to the gradualist approach of his predecessors, Barak took the path of *totalism*, i.e. aiming at solving all remaining issues in one go. Pursuant to this approach, as he put it: "nothing is agreed until everything is agreed". Heroically, he wanted to resolve simultaneously all matters with Lebanon, Syria, and the Palestinians, and put a final end to all conflicts.

Shortly after his election, I was invited to meet him at his home in the outskirts of Tel Aviv. He described his new approach metaphorically: "In order to resolve a problem, you need to analyze what the problem is, and define your objective. The problem at hand is that we have an ugly dog in front of us. The objective is to beautify the dog. In order to do so, you need to analyze why it is ugly. And then you see that it is the tail that makes the dog ugly. Through this analysis, our task becomes easy: by chopping off the tail we will have a beautiful dog." And then he added sarcastically: "But I will not chop off the tail of the dog the way you Oslo people have been doing it, painfully slice by slice like a salami. We need to chop it off all in one go."

In this spirit, in the summer of 2000 President Clinton brought the parties to the presidential estate at Camp David for marathon talks behind closed doors. The attempt failed for many reasons. First of all, a few weeks of talks did not provide ample time to address the thorniest issues (Oslo took six months of negotiation to address the least difficult issues). Other reasons were internal Palestinian disagreements and difficult interpersonal relations, in addition to a "take-it-or-leave it" approach by Israel.

Although the leaders left Camp David without diplomatic feathers in their cap, President Clinton and his team now had a clear sense of what was needed to bridge the gap between the two parties. In late December 2000, he presented what became known as the Clinton Parameters. They were a comprehensive set of American ideas on how to end the conflict. However, time was not on the side of peace. With his second term coming to an end, Clinton was unable to persuade the parties to conclude an agreement. In addition, Likud Party leader Ariel Sharon's visit to the Temple Mount / Haram al-Sharif in September 2000 signaled the second Palestinian uprising. This reduced the room for maneuver for the Palestinian negotiators.

Following the election of George W. Bush as President of the United States, and against the backdrop of the new Intifada, Palestinian and Israeli negotiators gathered in

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early 2001 in the small Egyptian seaside town of Taba. They attempted, through bilateral talks, to capitalize on the basic ideas put forward by President Clinton. In spite of high hopes inspired by the Taba talks, hope was dashed by Israeli intransigence, reinforced by the violent uprising across the West Bank and Gaza, as well as internal tensions within the Palestinian leadership.

In an attempt to revive the peace process, President George W. Bush, in a speech in the Rose Garden in June 2002, took the bold step of publicly declaring support for an independent Palestinian state. However, he was convinced that Chairman Arafat was an impediment to peace, due to the continuing violence against Israelis emanating from Gaza and the West Bank. The President made further US involvement in peace negotiations contingent upon Arafat's removal from power, and the implementation of democratic reforms in the Palestinian Authority's political structure. This was consistent with Prime Minister Sharon's policies. At this time, parts of the Palestinian leadership either passively turned a blind eye to the rise of bombings in Israel, or discreetly encouraged it. Arafat became a pariah for several essential players and was isolated in his Muqata headquarters in Ramallah.

Under these dire circumstances, UN Secretary-General Kofi Annan called for a meeting in the conference room of his executive office at United Nations' Headquarters in New York with the US, Russia, and the European Union. The frustration was deep amongst all parties. Bilateral talks did not happen. Trilateral talks did not work. In response to the breakdown of the peace process, he suggested that the four actors coordinate a position to restart the process. The idea was to combine the political power of the US, Russia's credibility amongst key Arab states, the European Union's financial muscle, and the UN's legitimacy in a potent new international coalition. The UN Secretary-General coined the phrase the "Middle East Quartet" for this informal group. The Quartet met both at principals level and at the level of special envoys.

A novel approach to the imbroglio of Middle East peacemaking was launched: *multilateral unilateralism*. The concept was launched at a Quartet Envoys' working dinner at the Norwegian Ambassador's residence in Herzliya (a suburb of Tel Aviv) by US officials William Burns and David Satterfield. The idea was for the Quartet members to collectively produce an operational peace plan to be presented to the parties for implementation, without prior consultation. This resulted in the Quartet peace plan, referred to as the Road Map, which was eventually presented to the parties as an ultimatum in 2003. In other words, a unified position was imposed by a group of third parties upon the disputants—thus, *multilateral unilateralism*.

The Quartet collectively submitted the text to Palestinian Prime Minister Mahmoud Abbas. The US ambassador to Israel presented it to Israeli Prime Minister Ariel Sharon, who refused to meet with the Quartet as a whole. The Palestinian side accepted the proposals in total while the Israeli side came up with fourteen reservations.

The Oslo Accords mapped a path towards a possible peace agreement, setting up milestones to be passed along the way, and stipulating that the ride on this bumpy road would take five years. It did not define the end point of the journey, because the parties were not capable of closing the gaps between their positions at the time. The 2003 Performance-Based Road Map of the Quartet was, in many ways, the paper that concluded the Declaration of Principles of 1993, by designating the last milestone, the establishment of a Palestinian state.

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However, compromises among the Quartet members led to ambiguities which gave the parties the opportunity to make radically different interpretations of their obligations under the plan. The Israeli side claimed that the Road Map called for security first—a complete end of Palestinian violence—before any negotiations could start. This strategy was called *sequentialism*. The Palestinian side, and the international community at large, supported a strategy of *parallelism* that called for progress on both security and political issues to happen in lock-step. The collision of the concepts of *parallelism* and *sequentialism* made it impossible to reach the final destination envisioned in the Road Map.

With gridlock in the formal negotiating process, civil society groups tried to take the initiative. One example of several is the Geneva Accords of December 2003 led by PLO official Yasser Abed Rabbo and former Israeli Minister Yossi Beilin.

The stalemate in the process continued until Ehud Olmert's election as Prime Minister in 2006. Through intense negotiations facilitated by US Secretary of State Condoleezza Rice and her team, the parties came close to striking a deal which would have pushed the peace process forward. However, as the end game of this phase of the negotiations, also known as the Annapolis process, unfolded, Prime Minister Olmert had to step down because of an indictment for alleged financial misconduct. At the same time also, a new wave of rockets emanating from Gaza, lead to a military operation in the Strip (Operation 'Cast Lead').

The scene and characters changed in early 2009 with the election of Barack Obama as President of the United States, and Benjamin Netanyahu as Prime Minister of Israel for a second time. Shortly after his inauguration, President Obama attempted to resuscitate the peace process with the appointment of a new high-level special envoy, Senator George Mitchell. An absolute freeze on settlements, including in Jerusalem, was made a precondition for bringing the parties to the table. This turned out to be a self-defeating proposal. For any Israeli Prime Minister, such a major move could only be the result of, and not the pre-condition for, negotiations.

During this paralysis, the Palestinian leadership looked for alternative ways of moving forward, and shifted their strategy from bilateralism to unilateralism through a bid to upgrade the Palestinian status to be on a par with the Vatican at the United Nations: that of an observer Member State in the General Assembly. This quest reached its climax during the UN General Assembly sessions of 2011 and 2012. In a speech to the General Assembly in September 2011, President Abbas called for admission of Palestine as a Member State of the United Nations. It reflected the growing frustration among the Palestinian community with the lack of progress since the end of the Annapolis process in 2008. In December 2012, the Palestinians were granted, with a large majority, state observer status at the UN.

ON PART III: UNITED NATIONS DOCUMENTS ON THE QUESTION OF PALESTINE

An accurate picture of the Israeli–Palestinian conflict must include an understanding of the role of the United Nations. Part III provides a comprehensive collection of Resolutions and documents which have significantly shaped the context of this seemingly intractable issue.

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Many of the political battles related to the Arab–Israeli conflict have been fought in the halls of the United Nations. On 29 November 1947, the UN General Assembly voted Resolution 181, also known as the Partition Plan. It called for the creation of two states—one Palestinian and one Jewish.

Other key UN Resolutions include General Assembly Resolution 194 (1948), which calls for the return of Palestinian refugees; General Assembly Resolution 303 (1949), which designates Jerusalem to be placed under UN jurisdiction; and, most famously, Security Council Resolution 242 (1967), which calls on Israel to withdraw from all territory seized during the Six Day War of 1967.

Paradoxically, some of the Resolutions are seen by both parties as supporting their side of the argument. For example, in Resolution 242 the interpretation of the clause calling for "withdrawal of Israel armed forces from territories occupied in the recent conflict" has been controversially ambiguous, and the object of widely different interpretations. The key argument relates to whether the clause requires Israel to withdraw from all territory occupied in the 1967 war, or only from some parts of the territory captured. While many Resolutions have had hardly any effect, they nevertheless continue to be used as points of reference in the different attempts to resolve the conflict.

ON PART IV: REGIONAL DOCUMENTS

The Israeli–Palestinian issue cannot be seen in isolation: it affects and has been affected by broader regional dynamics and conflicts for a century. After years of colonial competition, France and the United Kingdom drew lines in the sand through the Sykes–Picot Agreement of 1916. This agreement divided the region into spheres of influence, and eventually led to the creation of new countries. In the subsequent thirty years, several programmatic initiatives were taken in the context of multiple anti-colonial campaigns for national self-determination and political sovereignty, including the quest of the Jewish people for a national homeland.

The 1948 war between Arab countries and the newly founded State of Israel resulted in the latter significantly expanding its territory beyond that allotted to it by the UN Partition Plan. This marked the beginning of more than half a century of Israeli–Arab tensions and conflicts. Gradually the focus moved from the legitimacy of the state of Israel to the country's territorial boundaries. This coincided with broadening support, not only internationally but also in Israel, for the establishment of a Palestinian state living peacefully, side by side, with the state of Israel, within mutually secured borders.

Obtaining the regional buy-in to peace with Israel began with the different armistice agreements signed in the wake of the 1948 war. While these agreements ended the war, the fighting continued to flare up as the armistice lines established were not internationally recognized borders.

The Arab–Israeli conflict came to a new head with the Six Day War in June 1967, when Israel conquered the Sinai Peninsula and the Gaza Strip from Egypt, the West Bank and East Jerusalem from Jordan, and the Golan Heights from Syria. In the aftermath, Arab nations unified their position against Israel with the Arab League

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Resolution at the Khartoum Summit, which is referred to as the "Three Noes Document" due to its clause that states: "no peace with Israel, no recognition of Israel, no negotiations with it". On 6 October 1973, Syria and Egypt launched a war against Israel that ended in a political stand-off between Israel and its Arab adversaries.

In November 1977, Egyptian President Anwar al-Sadat broke Arab unity when he—in a move which stunned the world—flew to Israel and addressed the Knesset in a bid for a peaceful resolution of the Arab–Israeli conflict. Subsequently, in 1978, he signed the Camp David Accords that established a separate bilateral peace agreement with Israel.

Camp David highlighted the importance of a third-party broker. When President Sadat and his counterpart, Prime Minister Menachem Begin of Israel, reached a stalemate, US President Jimmy Carter invited the parties to his presidential estate for trilateral discussions on 5 September 1978. Three scheduled days of negotiations turned into thirteen days of frustrating and intense talks. Since these tripartite discussions were unable to break the impasse, President Carter decided to work separately with both sides. The result was an American proposal which incorporated the requirements of both parties into a single text. After lengthy negotiations on this document, President Carter's shuttle diplomacy resulted in the Camp David Accords of 17 September 1978.

In 1993, PLO Chairman Yasir Arafat followed the precedent of President Sadat and broke ranks with fellow Arab leaders by secretly and bilaterally recognizing the State of Israel and signing the Oslo Accords. The year after, building on the agreements between Israel and the PLO, King Hussein of Jordan followed suit by negotiating a bilateral peace treaty with Prime Minister Yitzhak Rabin of Israel. This culminated in a spectacular signing ceremony at the desert border crossing of Wadi Araba in August 1994. In the agreement, Israel acknowledged Jordan's historical role over Muslim holy sites in Jerusalem and agreed to recognize this role in future permanent status negotiations with the Palestinians. The two leaders also agreed on steps such as the opening of border crossings and economic cooperation.

In 1999, Labor Party leader Ehud Barak defeated incumbent Prime Minister Benjamin Netanyahu. As has been described above, the new Prime Minister broke radically with the concept of *gradualism* that had been the hallmark of negotiations between Yasir Arafat and three Israeli Prime Ministers, Yitzhak Rabin, Shimon Peres, and Benjamin Netanyahu, favoring a more comprehensive approach to the peace process. For the first half of 2000, Arafat and the Palestinians were left to wait for a Syrian peace deal that was not to come. Despite Barak offering Syrian President Hafez al-Assad 99 per cent of the Golan Heights, it still fell short of Assad's demand for a return to the 4 June 1967 lines, and the Syria track subsequently crumbled. This put Arafat on the spot: how could he now, in front of the Arab world, accept less for the Palestinians than Assad had demanded for the Syrians?

The Lebanon track fared better. It began in late 1999 with a dialogue between Prime Minister Barak and me, as the newly appointed UN Special Coordinator for the Middle East peace process. The Prime Minister confided to me that, as a part of his comprehensive quest for resolving all the conflicts that Israel had with its neighbors, he wanted to end Israel's occupation of Southern Lebanon that had started in 1978. Eventually, he

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conceded that only the United Nations, and not Israel alone, could delineate on a map and demarcate on the ground the line of withdrawal. Such a line had to be, to the best of the United Nations' knowledge, in conformity with Lebanon's international boundaries. On this basis, and with the consent of the parties, the UN Secretary-General could then report to the Security Council and eventually recommend that it should confirm that Israel had ended its occupation. This understanding led to an agreement for the United Nations to negotiate with the Governments of Lebanon, Syria and Israel. Through intense, difficult, and stormy tripartite negotiations over five months, the UN Secretary-General was in May 2000 able to report to the Security Council that the UN had reached an agreement with Israel, Syria, and Lebanon on a line of withdrawal (the so-called Blue Line). On this basis, it was determined that Israeli troops had left all Lebanese territory. Further, he reported that, consistent with UN requirements, Israel's Lebanese proxy, the South Lebanese Army (SLA), had been disarmed and disbanded. Subsequently, the UN Security Council confirmed the end of Israel's occupation of Southern Lebanon in fulfillment of Security Council Resolutions 425 and 426 of 1978.

In September 2004, the UN Security Council adopted Resolution 1559. Secretary-General Kofi Annan appointed me as his special envoy for its implementation. In a nutshell the resolution called for respect for Lebanon's sovereignty, territorial integrity, and political independence; the disbanding and disarming of all Lebanese and non-Lebanese militias; and the withdrawal of all foreign troops. After Israel's full withdrawal from Lebanon in 2000, the only remaining foreign troops were Syrian. Immediately after the resolution was adopted, I engaged in intense negotiations with President Assad, who until the assassination of former Prime Minister Rafic Hariri on 14 February 2005, was consistently resistant to move on the issue. On 12 March 2005, I was airborne with a small UN team, among them Fabrice Aidan, on my way to Damascus for a new round of talks with the President. Midway, the captain informed me that he was requested to change course and land in Aleppo. Afterwards I was told that the reason was to avoid the media who were waiting for the arrival of the UN team in Damascus. I was picked up at Aleppo airport by Walid Muallem, who was then Deputy Foreign Minister. He brought me to Assad's villa, where a few hours of negotiations resulted in the Aleppo understanding, which outlined Syria's military withdrawal from Lebanon with specific timelines. Assad honored his word, and ended twenty-nine years of Syrian military presence in Lebanon consistent with Resolution 1559.

What is often forgotten in the recurrent doom and gloom in the Middle East, is that the step-by-step approach, which started with the Camp David Accords of 1978, has for more than thirty years led to conflict resolution: peace between Israel and Egypt; the Oslo Accords; the mutual recognition of Israel and the PLO; the establishment of the Palestinian Authority in Gaza and the West Bank, which still functions with its presidency, cabinet, and ministries; peace between Israel and Jordan in 1994, with the recognition of borders and a long-lasting security cooperation; Israel's withdrawal from Southern Lebanon in 2000; and the subsequent Syrian military withdrawal five years later; as well as Israel's pull out from the Gaza Strip. All these steps would have been difficult, if not impossible, without the previous ones.

In 2000 the attempts to put a final end to the Syrian–Israeli and the Palestinian–Israeli conflicts both failed. This exposes the risks of a *totalist* approach to solving such

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conflicts. These heroic attempts, facilitated by President Bill Clinton and his team, created a crisis of expectations, leading to the second Intifada and violent confrontation between Israelis and Palestinians, with tragic loss of life on both sides. This illustrates a fundamental dilemma in the choice between a *gradualist* and a *totalist* approach. *Totalism*'s "all or nothing" approach is inherently risky. When it backfires, it easily leads to a relapse into violence. *Gradualism* is less spectacular and appealing, with its incremental and long-term approach. However, it is precisely these characteristics which make it less risky, and more successful under some circumstances.

While *totalism* failed in 2000, with tragic consequences, it nevertheless broke down a number of taboos, such as addressing explicitly the partition of Jerusalem and the issue of Palestinian refugees.

ON PART V: ISRAELI AND PALESTINIAN DOMESTIC DOCUMENTS

Part V seeks to provide a fuller context to the quest for peace in the Middle East. All politics are local, and the Arab–Israeli conflict typifies this axiom. The ability of negotiators to come to conclusions is only half the story. Documents such as the original Palestinian National Charter or Israel's Declaration of Independence shaped attitudes, policies, and action on both sides.

Furthermore, the Part includes important policy statements that signal revisions of previous policies such as Palestinian Authority Prime Minister Salam Fayyad's vision for a new Palestinian state. In August 2009, Fayyad introduced the "Program of the Thirteenth Government" (the Fayyad Plan), which established a path to develop a functional Palestinian state within a two-year time frame. The blueprint sought to establish and improve governing institutions, end Palestinian economic dependence on Israel, and enhance overall infrastructure. It was a move to create a *de facto* Palestinian state within the existing Palestinian territory, regardless of any formal recognition of such an entity. Fayyad sought proactive steps to "end the occupation, despite the occupation". He stressed it was not meant as a unilateral declaration of statehood.

Indeed, substantial developments did take place during Prime Minister Fayyad's tenure. In 2011, both the World Bank and the International Monetary Fund made statements that the Palestinian Authority was capable of running the economy of an independent state, and that it was on track to developing the necessary functions of a state.

The Middle East peace process continues to run its crooked course. There is no quick fix. Yet, as this volume demonstrates, many brave attempts have been made to bring peace to this troubled region.

By compiling annotated documents related to the quest for peace in the Middle East, a useful record and reference tool are created. Our hope is also that this volume will inspire future students, analysts, policy makers, and negotiators to learn from, and draw on, the experiences of the past.

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As we continue to move on the crooked path, no doubt, this compendium will have to be updated in the future. Hopefully, one of those additions will be a peace agreement that will eventually allow us all to close the book on the protracted conflicts in the Middle East.

Terje Rød-Larsen

Oslo
13 September 2013

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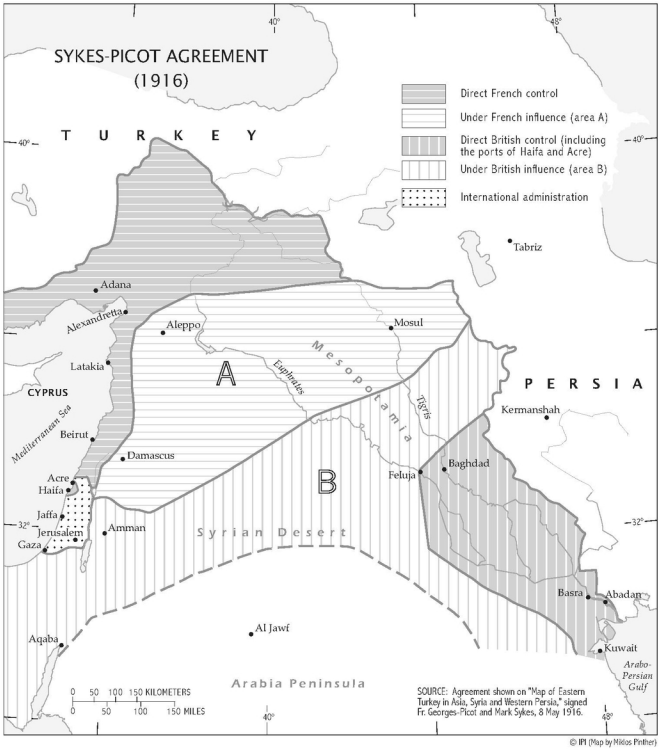
Maps

Map 1. Middle East Region 2014

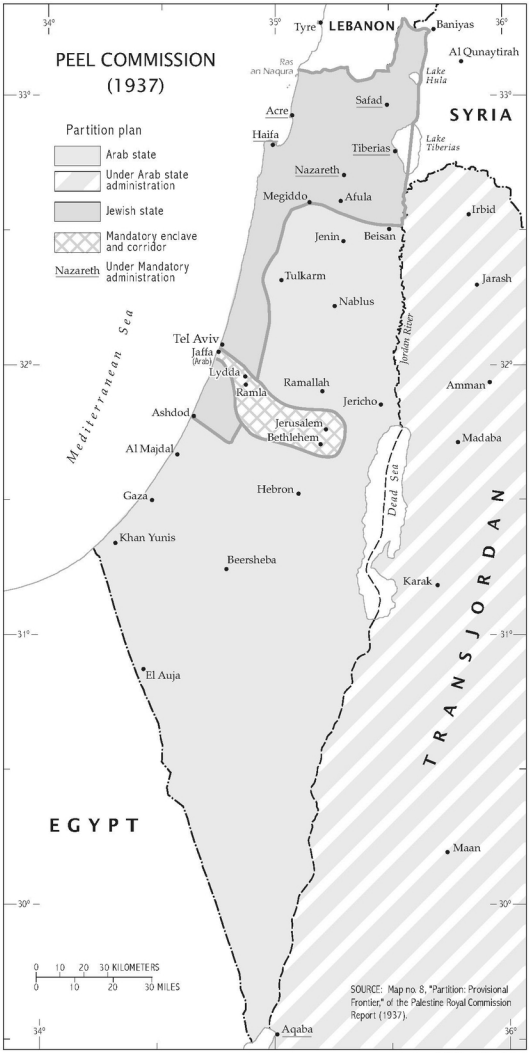
Map 2. Palestine 1900



Map 3. Sykes–Picot Agreement 1916

© IPI (Map by Miklos Pinthier)

Map 4. The Middle East after the San Remo Conference of 1920

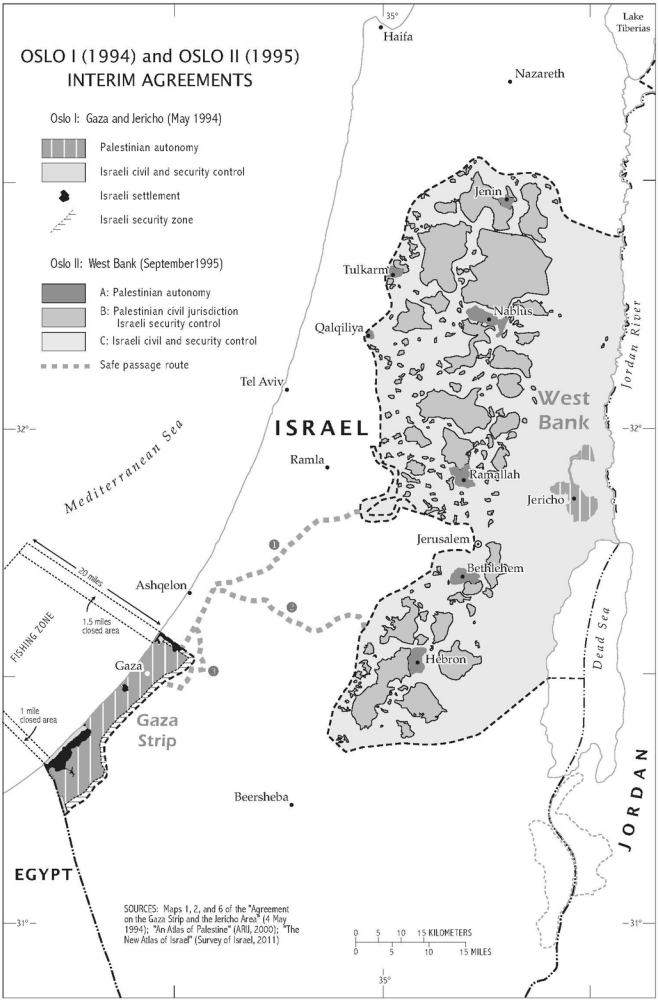


Map 5. Peel Commission 1937

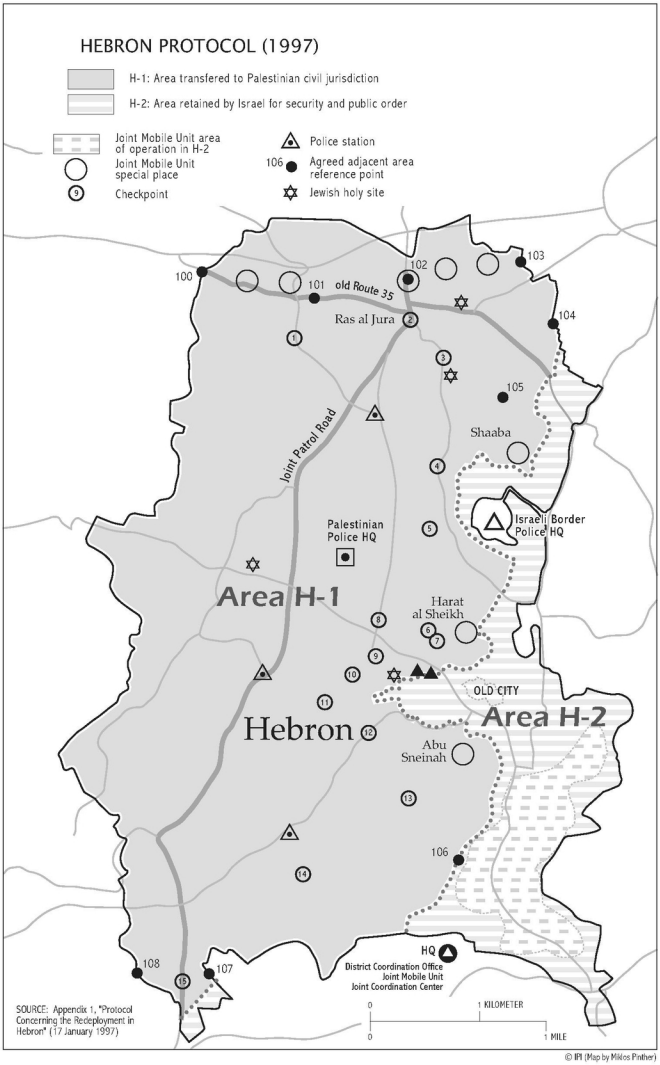
Map 6. Partition Plan 1947

Map 7. Armistice Agreements 1949

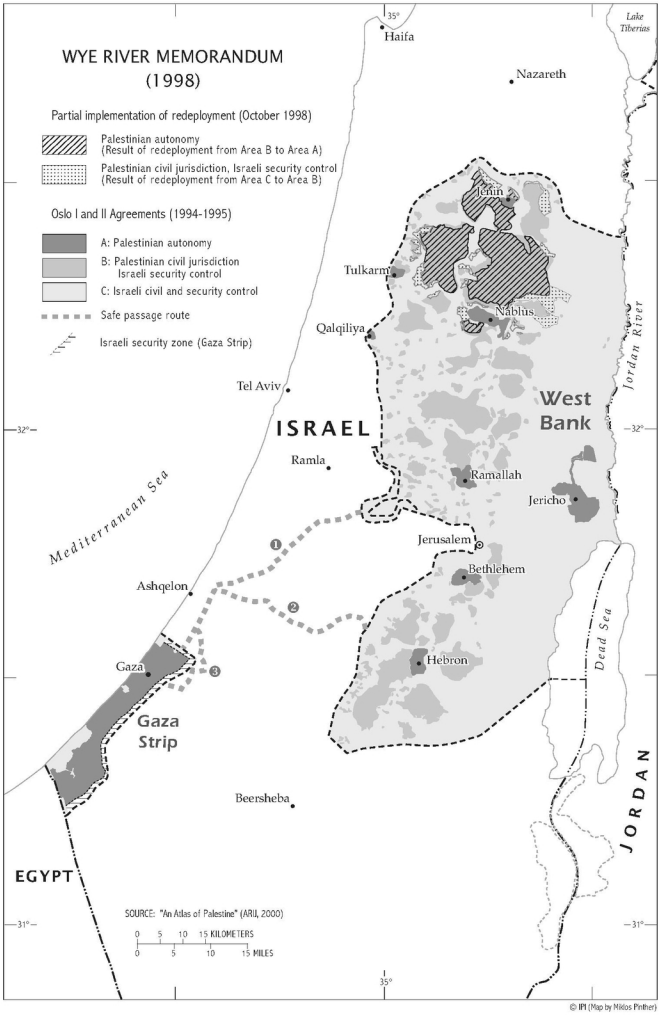
Map 8. Israel and the Occupied Territories 1967



Map 9. Oslo Accords 1994

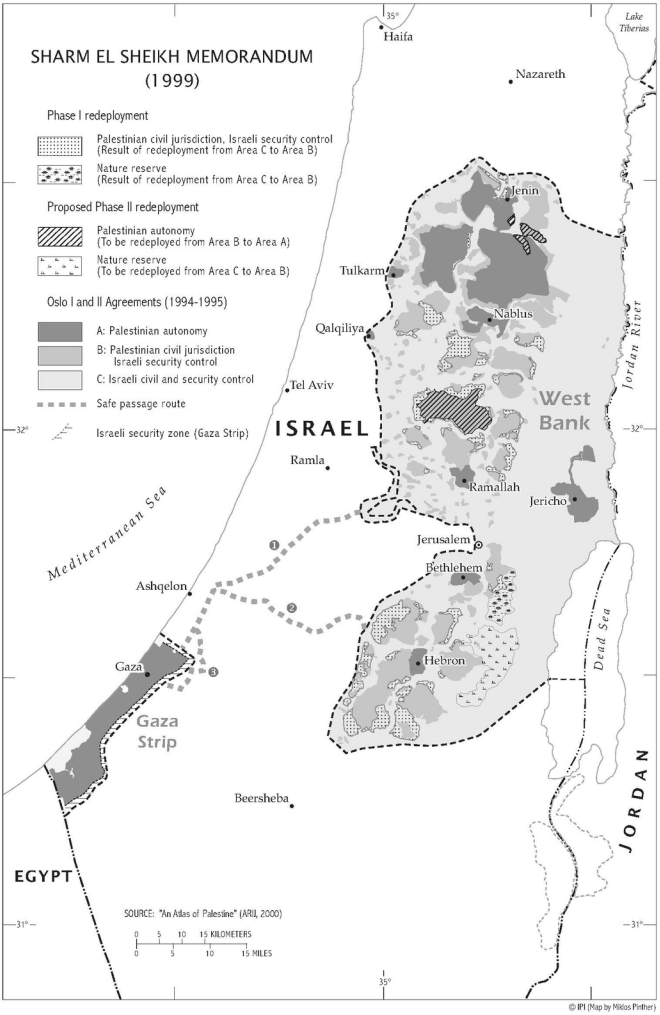


Map 10. Hebron Protocol 1997

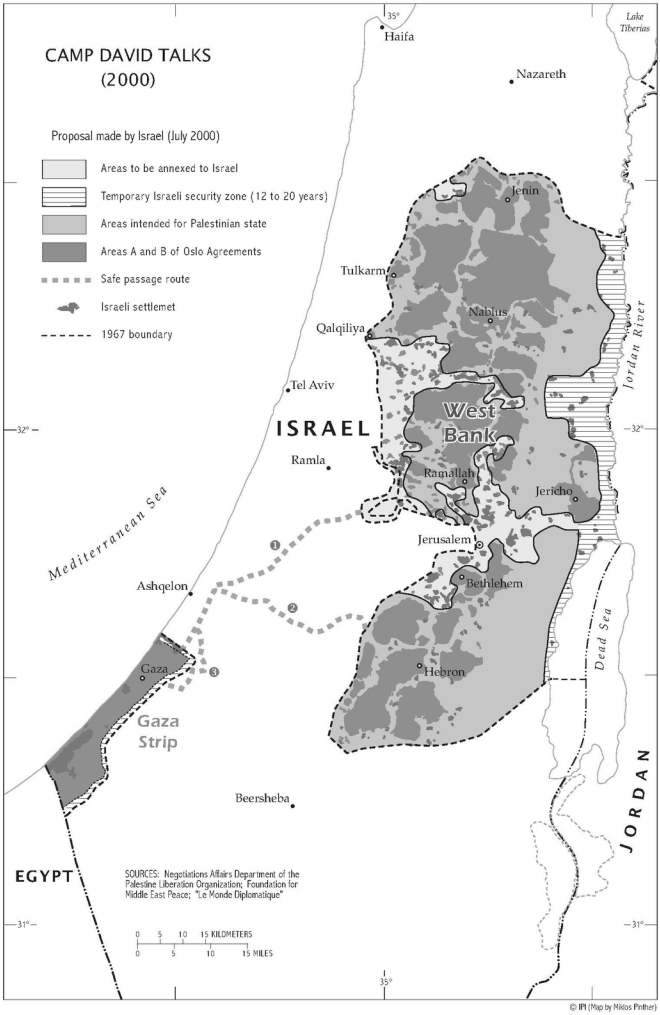


© IPI (Map by Miklos Pinther)

Map 11. Wye Memorandum 1998

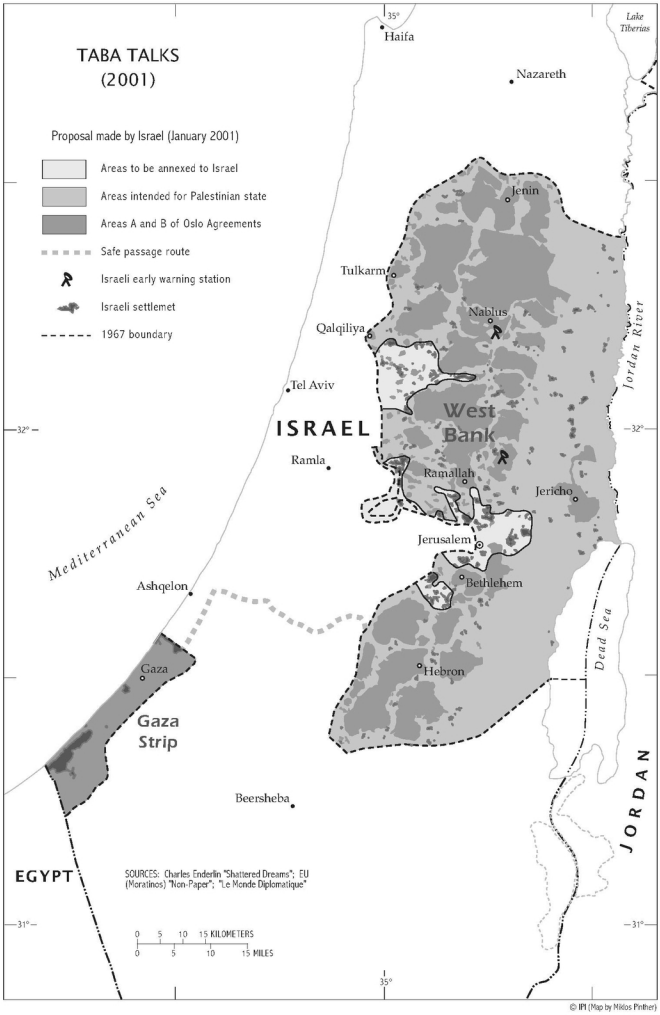


Map 12. Sharm el-Sheikh Memorandum 1999



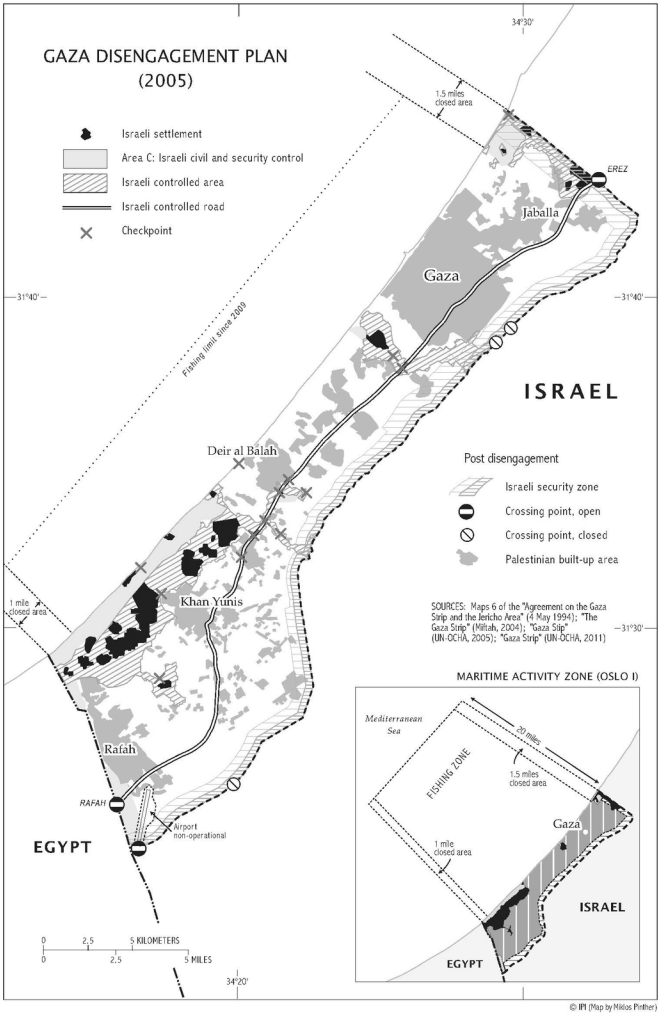
Map 13. Camp David 2000

Map 14. Clinton Parameters 2000



Map 15. Taba Talks 2001

Map 16. Geneva Accord 2003



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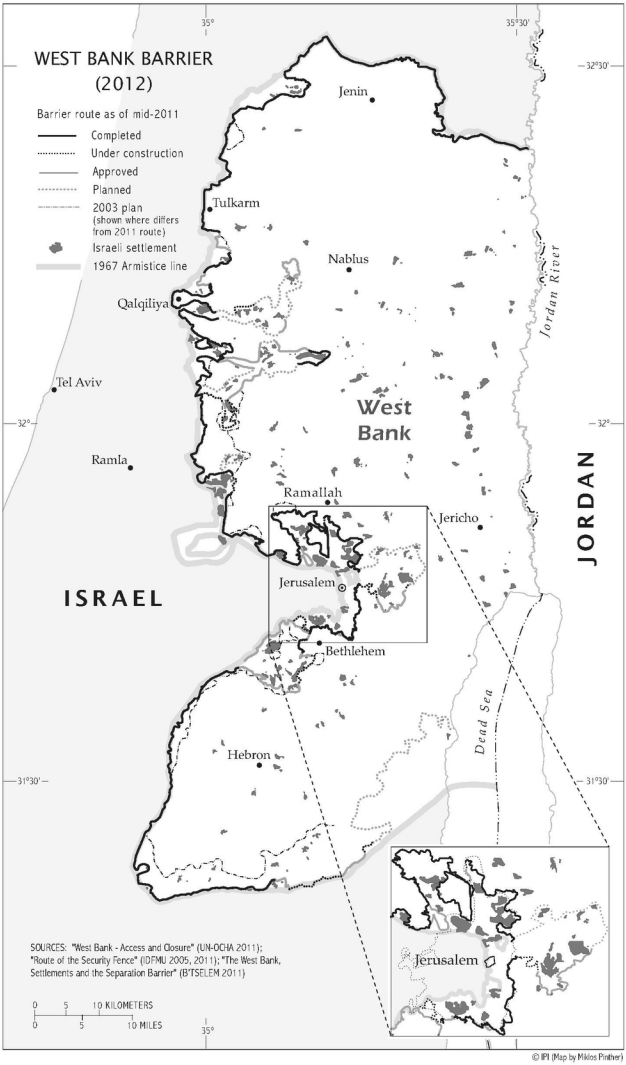
Map 17. Gaza Disengagement 2005

Map 18. Olmert–Abbas Talks 2007–8

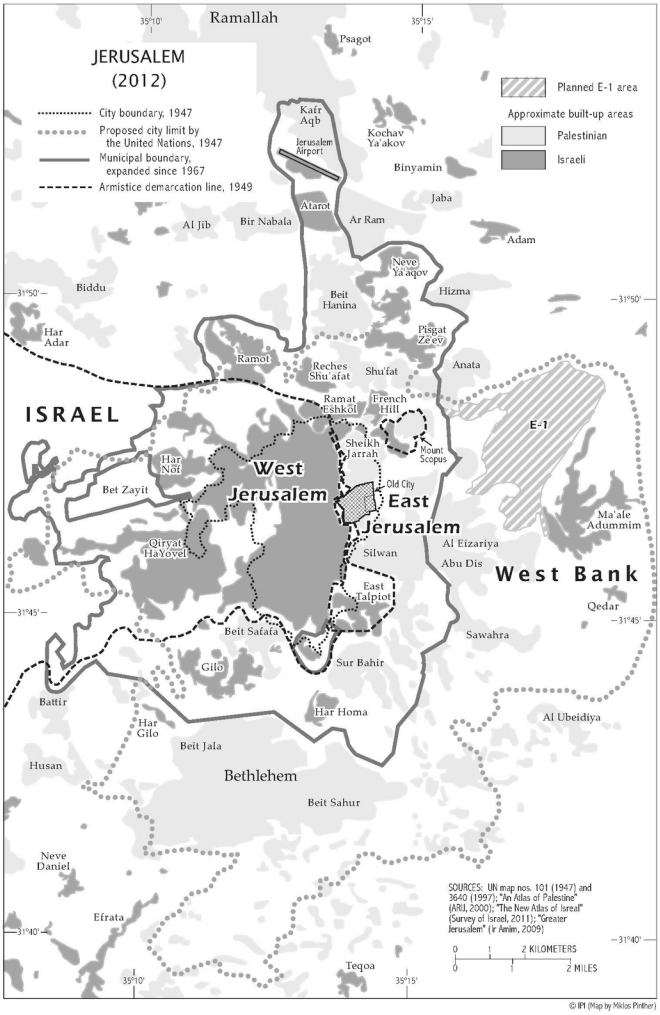
© IPI (Map by Miklos Pinther)

Map 19. Autonomous areas 2012

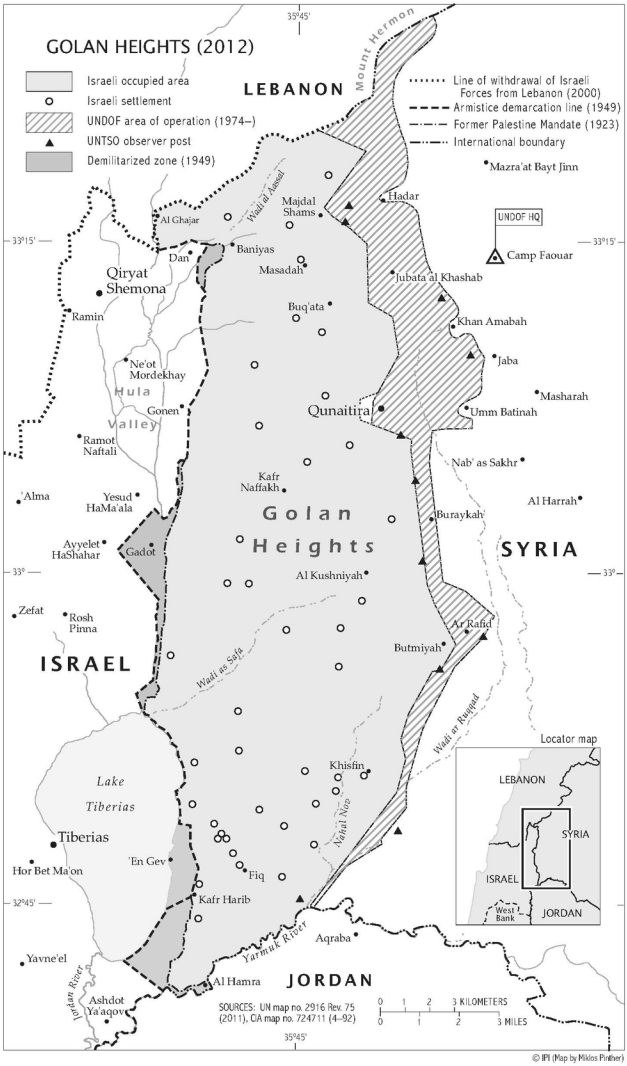


Map 20. West Bank Barrier 2012

Map 21. Israeli Settlements 2012



Map 22. Jerusalem 2012



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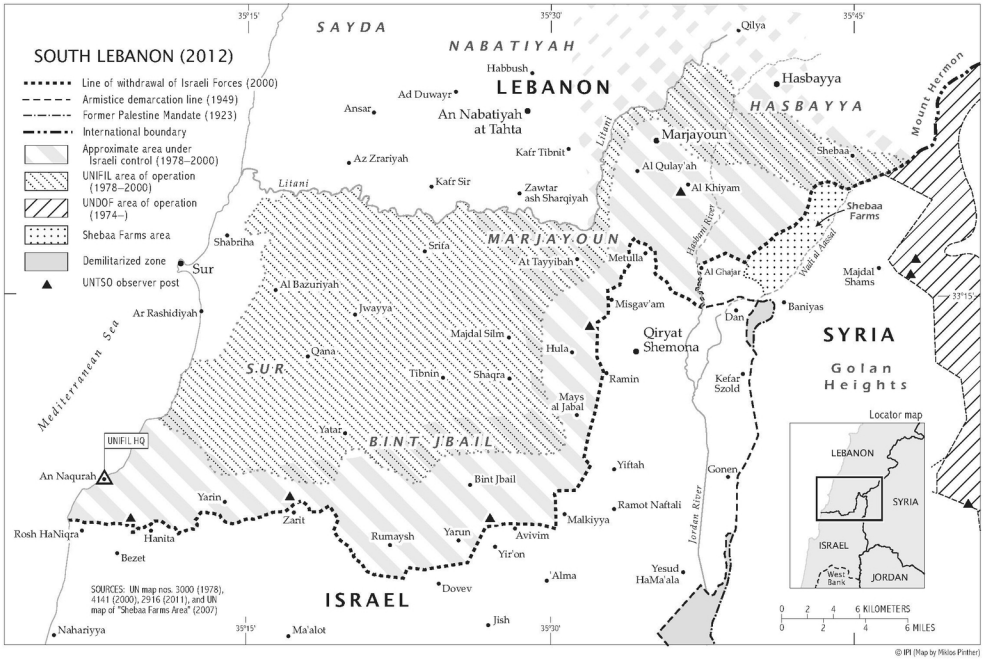
Map 23. Golan Heights 2012

OUP CORRECTED PROOF – FINAL, 12/9/2014, SPi



Map 24. South Lebanon 2012

HOUSE_OVERSIGHT_023197

From: Lisa New [redacted]
Sent: 12/7/2015 7:23:18 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: and....another bit of advice ...? on WA

Importance: High

politicians I have taped

Bill Clinton
Al Gore,
John McCain
Mayor Rahm Emanuel
Mayor Tom Menino
Supreme Court Justice Elena Kagan
Sir Mervyn King
Former Sec of Treasury Larry Summers

yeses from politicians not yet scheduled

Vice President Biden
Senator Mark Warner
Governor Jerry Brown
UN representative Samantha Power
former sec of State, Henry Kissinger
former Sec of State Condaleeza Rice
former Chancellor of the NYC schools, Joel Klein

In other categories I have taped

Frank Gehry, architect
Katie Couric , David Brooks and Andrea Mitchell, journalists
Richard Dawkins and Peter Gallison, scientists
Head of the College Board, David Coleman
Dean of Harvard Law School, Martha Minow
plus several poets laureate.....

On Mon, Dec 7, 2015 at 2:04 PM, jeffrey E. <jeevacation@gmail.com> wrote:
send me the list of policticans the list you sent will generate an of course not

On Mon, Dec 7, 2015 at 3:01 PM, Lisa New <[redacted]> wrote:
Dear Jeffrey,

As you probably know, Woody Allen's legal team said that we couldn't use the film we shot of him: online, for broadcast, anywhere.

It was a fantastic experience taping with him and so, even if I can't ever use the footage, I'm still grateful to you for making the day possible. But of course I'd like to use the footage. I decided when--way back-- we got this very negative answer back from his lawyers that I should just take my time about asking --since it would take us 2 years to be ready to edit the footage anyway (The online course is chronological. When I taped Woody we were still back in 1730. Now we've gotten to the 1920s)

Well, we've now arrived at the season when we'll be editing materials on William Carlos Williams for our course on Modernism and, as we discussed on Saturday, on poetry and other arts, The Poetry of Art, Sport, and Play

I would also, of course, love to make a tv episode out of the conversation, but the threshold question is whether he'll let us use it for anything at all. In case it would matter,

Other performers who have already taped with me include

John Lithgow,
Diane Paulus
Julie Taymor
Nas
Eve Ensler
Damian Woetzel
Kate Burton
Lil Buck Riley
Alfre Woodard
Herbie Hancock
Tony Kushner
Natalia Zukerman

and those who have agreed to tape with me include

Sally Field
Lena Dunham
Yo Yo Ma
Anna Deveare Smith
and more.

Those in other fields include journalists, senators, president clinton etc etc. You've read my pitch before (many times)

His is one of only two releases that we haven't gotten. What do you think of my chances?

Lisa

--

Elisa New
Powell M. Cabot Professor of American Literature
Harvard University
148 Barker Center
12 Quincy Street
Cambridge, MA
O2138
[redacted]

--

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--

Elisa New
Powell M. Cabot Professor of American Literature
Harvard University
148 Barker Center
12 Quincy Street
Cambridge, MA
O2138
[redacted]

From: Kathy Ruemmler [redacted]
Sent: 7/29/2017 10:28:10 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

This week was totally bananas. Did Andrea Mitchell yesterday to discuss Trump/DOJ.

Apartment appointment is Aug. 2 at 4 pm.

Sent from my iPad

On Jul 29, 2017, at 6:12 PM, jeffrey E. <jeevacation@gmail.com> wrote:

wash this week . what time see apt

--

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 12/7/2015 7:35:13 PM
To: Lisa New [redacted]]
Subject: Re: and....another bit of advice ...? on WA

better list to present woody

On Mon, Dec 7, 2015 at 3:23 PM, Lisa New <[redacted]> wrote:

> politicians I have taped
>
> Bill Clinton
> Al Gore,
> John McCain
> Mayor Rahm Emanuel
> Mayor Tom Menino
> Supreme Court Justice Elena Kagan
> Sir Mervyn King
> Former Sec of Treasury Larry Summers
>
> yeses from politicians not yet scheduled
>
> Vice President Biden
> Senator Mark Warner
> Governor Jerry Brown
> UN representative Samantha Power
> former sec of State, Henry Kissinger
> former Sec of State Condaleeza Rice
> former Chancellor of the NYC schools, Joel Klein
>
> In other categories I have taped
>
> Frank Gehry, architect
> Katie Couric , David Brooks and Andrea Mitchell, journalists
> Richard Dawkins and Peter Gallison, scientists
> Head of the College Board, David Coleman
> Dean of Harvard Law School, Martha Minow
> plus several poets laureate.....
>
> On Mon, Dec 7, 2015 at 2:04 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> > send me the list of policticans the list you sent will generate an of course not
> >
> > On Mon, Dec 7, 2015 at 3:01 PM, Lisa New <[redacted]> wrote:
> >
> > > Dear Jeffrey,
> > >
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Julie Taymor
Nas
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Alfre Woodard
Herbie Hancock
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Lisa

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Harvard University
148 Barker Center
12 Quincy Street
Cambridge, MA
02138
[redacted]

--

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 12/7/2015 7:36:12 PM
To: Lisa New[redacted]
Subject: Re: and....another bit of advice ...? on WA

write me a letter using only the top list and forward me his clip please

On Mon, Dec 7, 2015 at 3:23 PM, Lisa New <[redacted]> wrote:

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> Bill Clinton
> Al Gore,
> John McCain
> Mayor Rahm Emanuel
> Mayor Tom Menino
> Supreme Court Justice Elena Kagan
> Sir Mervyn King
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Date: Mon, Oct 26, 2015 at 8:37 PM
Subject:
To: Brad Wechsler <[redacted]>, Melanie Spinella <[redacted]
gain at 20 % not 28. . so total , 35.8%. tax rate. same for boat. and plane each around 10 m so total 7 m savings if both sold

Date: Tue, Oct 27, 2015 at 11:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella <[redacted]>
Cc: Brad Wechsler <[redacted]m>
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

Date: Wed, Oct 28, 2015 at 5:56 AM
Subject: Fwd: Detailed constructive list.
To: Lesley Groff <[redacted]>
please print two copes . re formattted so leon can go line by line ie . heading s question, gift answer. blank who responsible. time frame. fee paid when?

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella <[redacted]>
Cc: Brad Wechsler <[redacted]>
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

From: **jeffrey E.** <jeevacation@gmail.com>
Date: Tue, Feb 24, 2015 at 2:20 PM

Subject:
To: Melanie Spinella <[redacted]>
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.
In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.
I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :
With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)
With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement

right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .
We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

--

Date: Wed, Nov 4, 2015 at 4:45 AM
Subject:
To: Melanie Spinella <[redacted]>
okay, its time for you to decide how you would like to move forward. (fyi get your money from the 1031 . the screw up is only one of many,) If you decide to move foward on decanting. phaidon, note basis estate update , each requires many carefully orchestrated detailed steps. and precision . there are hundreds of millions in saving if done correctly and a huge mess if not. If you want me and my colleagues to do it , oversee it paper it and guide it, you should tell me. It is a big undertaking . If not , ok .. Brad and your crew can do it. I will have no real further involvement apart from confirming the outcome of my proposed structure, I will not risk the admonition of- they thought you said, they thought you meant, they understood it to be. but they said you said, (i e ,I asked at our meeting that accounting be done properly for bens house , what came back was ada thought that I meant that we needed to go back to the 97 trust and give him a full third party accounting of where his money had gone??!! I kid you not). I dont think brad should talk to jane heller without a fully fleshed out plan in place and even then it should be you.

Date: Wed, Nov 11, 2015 at 10:59 AM
Subject:
To: Richard Joslin <[redacted]>, Joe Avantario <[redacted]>, Brad Wechsler <[redacted]>
lets calculate the exact payoff amount for the leon note as of nov 30 ,DEC1 , dec 31. 1) does art space get folded in to phaidon. . middle cos disolved.? 2 collapse topco etc
open bank accounts for apoo
interest will be approx 50k per day . look at deduction.
note payoff docs- notaries . new docs. releases ? , accountings? disclosures? (gaming ?) art partnership . renew. will? repaper lease guarantees? macfarlanes. ? do we pay down 10m. of plane. ? proposal for airplane , 91 , 135. exec , jet. .? remove debra. from plane?

Date: Wed, Nov 11, 2015 at 11:00 AM
Subject:
To: Melanie Spinella <[redacted]>
we should discuss e trust and j black trust. , brad buying phaidon. artspace folding ? plane/ boat. foundation.

Date: Wed, Nov 11, 2015 at 9:09 PM
Subject:
To: Melanie Spinella <[redacted]>

we need to coordinate. brad bank, cannot be clumsy

Date: Fri, Nov 20, 2015 at 10:50 AM
Subject: agenda
To: Melanie Spinella <[redacted]
1. brad or richard. makes litte difference. 2. gagosian . no written contract??!! fishy to me - who transfers 100 million dollars overseas without a contract ,- dont want you pulled into a scandal. careful especially as he is on the tax dept radar, . 3. I would like you to delineate what you would like me to do - the more specificity the better.- I think it important to avoid any misunderstandings as to each of our obligations and responsbilities. I will always give you my best advice. I have made my views re ada and the office clear . no hedging. . THEY should go. no hesitation . no zeus, your choice obviously. good news - I will not bring it up again. moving forward- These transactions will require a great deal of manpower over the next holiday month, every document needs minute review. . I would like to fix our fee agreement , in detail no later than this weekend . ie amounts , dates paid . entities paid. any concept you may have of" after care"? all on the table. .other questions such as how much to leave your children ,in what form, has no right answer. but you and I can dialougue as long as you like about issues of judgement. it is out of o friendship. not biz. (bill hellman as a trustee?) . we can talk about that during walks etc . I would like for you and I to go back to having fun.

Date: Mon, Nov 23, 2015 at 11:53 AM
Subject:
To: Melanie Spinella <[redacted]>
25 minutes needed. 1 new and vastly improved plan, needs your thoughtful input. decisions on legacy paintings bronzes. books etc. 2. we need to reach fee agreement. and authorities.(alan and I spent time over the weekend,) , hundred documents to be drafted. 3. gagosiaon 4 revolver . 5 inspire - FBI . 6. Phaidon, solution. 7 plane. no need to reinvent the wheel. . (rowen).

Date: Tue, Nov 24, 2015 at 2:41 PM
Subject: Fwd: Loan
To: Melanie Spinella <[redacted]>
Please talk to him

Date: Tuesday, 24 November 2015
Subject: Loan
To: Jeffrey Epstein <jeevacation@gmail.com>
Cc: Melanie Spinella <[redacted]>, "Alan S. Halperin" <[redacted]>, Ada Clapp <[redacted]>, Joe Avantario <[redacted]>
Jeffrey-given the high daily interest cost (50k+/-) on $$ borrowed which you pointed out yesterday, here's what I'm thinking, but I want to be 100% on the same page as you:
1. Close next monday on the credit line, but don't borrow any $$. (We can, of course push closing back but my preference wld be to close.)
2. Right now, at barry's request, Irene Steiner, on behalf of the trustees is reviewing apo1 and apo-o1. While probably not impt on a "substantive" basis it was (a) impt to barry and (b) is likely good for leon.
3. We are hoping to have signature pages to the trustees (and returned to us) by early to mid next week. (Ada will oversee.)
4. We will then get the new trust to bofa who, moving quickly (according to them), will have an acct open the following week, 12/7-9.
5. We need to manage execution of paperwork associated with decanting which I assume occurs once apo-o1 and bank acct are operative. (Ada I'm sure you'll be on top of this).

6. I assume we will move $$ to pay down loan the day or day after (?) apo-01 bank acct open. As you know we cld do this as early as next monday/tuesday but then cash will be sitting in apo-1 while we're waiting for apo-01 bank acct.
7. If there are sales of assets (or llc's) from leon to apo1 or apo-01 that needs to be buttoned down and organized asap.
8. Same if you want another NEW trust in the mix as that will involve paperwork and opening an acct with bank.
Let's discuss to make sure we're on the same page on process. B
Sent from my Verizon Wireless BlackBerry

Date: Mon, Nov 30, 2015 at 5:21 PM
Subject: agenda
To: Melanie Spinella <[redacted]>
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Tue, Dec 1, 2015 at 12:26 PM
Subject:
To: Brad Wechsler <[redacted]>

I would like to consider the gaming commmison disclosure dates. . 2 we should put to bed once and for all adas concerns re the bronzes. . alan should opine on valuation ranges? rather than estimates. . 3. Leons input re gagosian purchase. (trade in , 1031 if 17 likely transfer- . scream, phaidon. plane and boat. 4. I would like to review all assignment docs. decanting schedules. (exhibits). balance sheets for apo1-2 . . loan docs re transfer of narrows inside . 5. Leon should be clear regard future steps . pent etc. swaps , paydowns 6 mock-ups of all before trigger pull.

Date: Wed, Oct 28, 2015 at 12:56 AM
Subject: Fwd: Detailed constructive list.
To: Lesley Groff <[redacted]>
please print two copes . re formattted so leon can go line by line ie . heading s question, gift answer. blank who responsible. time frame. fee paid when?

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella <[redacted]>
Cc: Brad Wechsler <[redacted]>
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay

etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

ate: Fri, Dec 4, 2015 at 2:07 PM
Subject: Fwd: moving forward
To: Melanie Spinella <[redacted]>
I had forgotten that Alan was actually at the table when i explained my note deal to you. it was at the end of the meeting described below. . as you will recall , not once , not even a peep did alan suggest contemporaneously his hand in the crafting, in fact brad said it was an idea. that HE brad, HAD HAD , from the begiining . my emails between alan and I that you can read , further confirm authorship. Im sure you recall the obnoxious tooting when alan said he agreed with my plan. .

Date: Mon, Nov 2, 2015 at 10:03 PM
Subject: moving forward
To: Melanie Spinella <[redacted]>
I have mixed emotions about what transpired today. really, You saw first hand in nauseating detail what i have been saying to you for quite a while now. Joslins answers were totally incomprehensible. the charts he prepared unreadable. Brads defensive posture was at a minum very surprising . He and I have recently gotten along quite well , I thought . Neither Joslin or Brad understood a 180 million dollar number . no cash flow after weeks of requesting? odd. when you suggested that heathers behavior was emblematic of a sloppy office , brad said lets not talk about emblems??! bill pay , admittedly no change for the year. . plane not done. though it was the only thing i suggested doing first in july . . I sent you a list of 10 consultantts. brad said three, . i didnt want to push it. I was shocked that brad was opining on things he knows little or nothing about. tax issues. 1031. neg basis , note payoffs (the same idea he said he had had from the beggining??!!) . answers re LBF holdings that can be corrected (they cant) . valuations that have never been read. . When we met in your lobby he seems surprised that i was there. I dont know if he felt somewhat sandbagged. . .
the savings on the note payoff is aprrox 33 % of 1.8 billion. real money if you do phaidon which i see no reason not to . if later josh and ben want to buy it back with you or without you they can. i will walk you through the structure one on one. . the losses will offeset the calder gain as well as apollo gain.
Im aware that seeing what you saw frustrated you. I felt badly for you.

You wanted a contingent deal. real value. etc. I will not of course hold you to your deal . . its silly. its not how i work or a reflection of our friendship. my proposal is as follows. I want away from your buisiness , but at the same time leaving you in good shape. I think you should pay the 25m that you did not for this year. for next year its the same 40 m as always, paid 20 in jan and 20 in july, and then we are done. I will give you advice and counsel but new people will be running your operating machine. I will oversee all the work that needs to be done you and I will hire new people , and it will be self running. (it was may in my house when you told brad it had been 5 months and you were getting fed up) I will set up a parallel . office , somenoe like wendy dolman or her quality is paramount. two accountants two bookeepers and two office admins. . alan and zoe will handle trusts and grats. heatehr diana george will be incolved in art partnership. if you want brad, analysts etc. and kids to do investments I have little to add in that regard ,except to be able to account for things properly. I suggest that the kids must have skin in any deal.
Alternatively , we can continue to focus on fun and let someone else do the things that you want done.

and you and I can kibbitz about it all. structures outcomes risk, museums. charity, (joslins answer by the way was I had asked how much charity was leon planining to give this year , (the 2 m) he didnt include your foundation or the payment to me, or from debra and you??!!

Date: Mon, Dec 7, 2015 at 5:39 PM
Subject: Fee
To: Melanie Spinella <[redacted]>
Amount ? Paid in kind ? Financed ? Plane ?Paid to ? Non charity , charity . Fixed dates

Date: Mon, Dec 7, 2015 at 8:05 PM
Subject:
To: Melanie Spinella <[redacted]>
please re iterate that no further actions taken without careful document review. please

Subject:
To: Melanie Spinella <[redacted]>
Leon,
As you are well aware, There is little I won't do for you, or at least try to do as a friend, and a great deal that I have already done (both known and some things that willneed to remain unknown.) Our arrangement was for me to architect sophisticated structures that would be beneficial to you. that is what I have done and will continue do in order to fulfill my obligations under our agreement. The discovered fact that you in reality need an entire family office built from scratch has been trying I have aleady agreed de- facto to try to help. I would suggest that Phaidons payroll and attention pales in importance to your personal structure,which has taken a back seat, Some of my suggestions regarding the Eysium office are as follows you will need a budget of 3- 5 million per year. CEO 1 million, new tax person to work with rich, 250. new bookkeeper ,200 new paralegal to work with ADA ALan etc , coordinating with Apollo, Akin , paul weiss , new acct openings , sec filings , sales tax review, etc. $150 . art point person. loan , inventory, purchasing support, $?? software servers. video conferencing, tax oversight.
I believe You should rapidly address trustees , gift trust, succesion, wills of debra and children, , monetization events , cash flow. etc I can of course share my experiences with you on each issue.
WIth regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the begining of my involvement) I am also aware however of my overarching friendship obligations of ok, - given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)
With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex isssues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is.

coordination with Suydam Kathy gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.
talk later..

Date: Sun, Dec 28, 2014 at 5:18 AM
Subject: jobs ahead
To: Brad Wechsler [redacted], Melanie Spinella [redacted], Ada Clapp [redacted]
1. review accounting system. Book keeping softaware. staff, (senior accountant) methods on line banking, brokerage. cash mgmt. airplane reimbursement. boat sale. art purchases sales use and sales tax. tax filings FBAR FATCA, gaming commsion, pfics, insurance . uk co law.
2. review docs for TRA BRH grats, trusts, heritage will, insurance, art lending. medical, springing powers. two fire drill books. one needed for injury. other for death
3 review bills . boats , planes, legal, (PW, McFarlands all outside. legal and accounting. Toms bills over 400k . house projects. south ny ben
4 cashflow projections tax projections , interaction with Apollo accounting tax, Phaidon ,art space ,and Regan. legal accounting. audit
5. children meetings , review to date and allocations
6 review all role in payables. files scanned, no paper
7 review invesmtents for tax basis and unrecognized gain
8 schedule of all hedge funds . redeemables commitments etc.
9 charities pledges strucutre, staff ,

Date: Fri, Feb 20, 2015 at 5:52 AM
Subject:
To: Melanie Spinella <[redacted]>
1) pg 1 A " unequal shares" . pg 23 "removal of trustees " absolute. dont be confused with abiltiy to set up seperate trusts, , 2) I am reachable this afternoon in europe. on cell. 3. on another note . -our financial agreement ended months ago . seperate from the art partnership (which i was told yesterday to my amazement is still not funded) . i am obligated to complete ? the time i have dedicated since oct/ dec has been spent mainly as your friend. tom, brad though i am fully cognizant of my responsiblities. I will try to help find people. I am not good at human resources. howevr If I don;t think they are good enough for you. I will continue to say so , and you obviously decide. but I will reiterrate even in the face of your "nobody is good enough argument." keeping foremost in my mind that you and I have only beeen shown a very tiny handful of people. 4. I find the friction over fees , counterproductive. in an attempt to avoid it I had suggested a multi year deal early on. you rejected it. I then suggested, and urged you to have an option at a fixed fee , you also rejected that .you wanted the fee payment only at the end I argued but ,conceded. I suggested a structure that tom didn't like. you rejected it . 5 I suggest you make a fair proposal.- that i can either accept or reject. some payment up front this time is a requirement. I am willing to modify any outstanding obligations. - there are creative ways to assure you of your desired characterization of those payments. 6 you should open accts at Deutsh . and goldman. I am told that eilleen has set up over one hundred bank acccts for you???!!. few relevant 7 you should immediatly demand a list of all her acct authorites , exec poistions . director etc. bank authorizsations. etc. talk later or over the weekend if you like

Date: Wed, Dec 9, 2015 at 10:16 AM
Subject: Fwd:
To: Jeffrey Epstein <jeevacation@gmail.com>
kkkjkjjjkjjyou said

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella [redacted]>
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.

In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.

I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.

Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a

new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of

course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .
We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Fri, Dec 11, 2015 at 12:19 AM
Subject: Re: Fw: sched
To: "jeevacation@gmail.com" <jeevacation@gmail.com>
Cc: "[redacted],
"[redacted]

Jeffrey-joe tells me you want this to go live on 12/21. Possible, but an awful lot has to go right next week logistically for everything to fall into place. We'll try....

From: Brad Wechsler
Sent: Thursday, December 10, 2015 05:36 PM
To: 'jeevacation@gmail.com' <jeevacation@gmail.com>
Cc: [redacted]
Subject: Fw: Fw: sched

On different subject: general time frame is: docs (notes and purchase and sale agreement to you tomorrow end of biz); incorporate your comments monday and get docs to trust attorney tuesday; contemporaneously meet in person with you tuesday or wednesday and do a dry run. On these days ada will also take the trustees through outline of docs they will receive thursday. Docs to trustees, leon et al on thursday and signatures gathered by friday for first close 12/22. Tight but doable. Ada, alan agree? PS: ada, you shld begin to think abt where people are (jh, rr, bc, ldb) next week.

From: Heather Gray [mailto[redacted]
Sent: Thursday, December 10, 2015 05:24 PM
To: Brad Wechsler
Cc: Jeffrey Epstein (jeevacation@gmail.com) <jeevacation@gmail.com>
Subject: RE: Fw:

Subject: Re: Fw: sched
Barry-what we're going to do with jeffrey will be "small picture" and detailed. It might be better for you

and jeffrey to have a higher level conversation some time next week; either way you'll have access to everything, obviously.

From: Barry J. Cohen [mailto[redacted]
Sent: Thursday, December 10, 2015 05:55 PM
To: Brad Wechsler
Subject: RE: Fw: sched
I wouldn't mind attending a meeting or portion of a meeting with JE. If he is the mastermind, and you want to move quickly, it might get a lot of questions resolved quickly.

From: Brad Wechsler [mailto:[redacted]
Sent: Thursday, December 10, 2015 5:37 PM
To: 'jeevacation@gmail.com'
Cc: [redacted]Melanie Spinella; Barry J. Cohen
Subject: Fw: Fw: sched
On different subject: general time frame is: docs (notes and purchase and sale agreement to you tomorrow end of biz); incorporate your comments monday and get docs to trust attorney tuesday; contemporaneously meet in person with you tuesday or wednesday and do a dry run. On these days ada will also take the trustees through outline of docs they will receive thursday. Docs to trustees, leon et al on thursday and signatures gathered by friday for first close 12/22. Tight but doable. Ada, alan agree?
PS: ada, you shld begin to think abt where people are (jh, rr, bc, ldb) next week.

From: Heather Gray [mailto[redacted]]
Sent: Thursday, December 10, 2015 05:24 PM
To: Brad Wechsler
Cc: Jeffrey Epstein (jeevacation@gmail.com<mailto:jeevacation@gmail.com>)
<jeevacation@gmail.com<mailto:jeevacation@gmail.com>>
Subject: RE: Fw:
No, I'm meeting with him at 9:30 am tomorrow.

Date: Fri, Dec 11, 2015 at 9:49 AM
Subject: fee
To: Melanie Spinella <[redacted]>
elegant solution ;re fee. , 30 million paid now. with purchase of noel kalb, paid with funds from the drawdown. you should use and keep open the line for the full 30m and leave it outstanding until its expiration. in four months. legit biz reason, very nice , - the balance of the fee - paid in kind either low basis art . or interest in either milenium ,lone cascade ,or king street.

Date: Tue, Apr 14, 2015 at 5:53 PM
Subject:
To: Melanie Spinella <[redacted]

saved you 500k at the last minute, . brad has had the same chart since march 16th, its his job to review NOT MINE .appears he is one of those living in the dark leiwe. I found 8 million dollars today, missed deductions. . not yet in the numbers, .?

Date: Wed, Apr 15, 2015 at 8:59 AM
Subject:
To: Melanie Spinella <[redacted]>

1 did the paul weiss bill get paid ??? 2. Talk to me before signing anything today important
10m paid today to gratitude america, a 501 c 3, willl make last year complete. 20 million paid today ftc . 10 million july 15 5 million sept 30. , 5 million jan 1 for all of 16 . tax savings paid at 37 percent . of net. savings. 50 million credit. net. so 150 million free . 600 savings 225 million owed. - 50 credit, 175 owed.

Date: Mon, May 18, 2015 at 8:17 AM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella <[redacted]>
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?)):: .
in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to eat the apple from the knowledge tree)
. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain)
books as they were mystersiously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.

still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with :

As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and

investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Thu, May 28, 2015 at 8:53 PM
Subject: ulysses 2.0
To: Melanie Spinella <[redacted]>
I realize it is only due to a lack of understanind of the job ahead. and not out of any sense of unwillingess to pay
- as opposed to merely hiring people to set up a family office, someone will have to do the following- separate from the art partnership which is my responsiblity . there still needs to be a huge amount of work done for 2015,16. not to mention that brad at the moment is going to have train the incoming team?? your call
strategic decisions re estate and other planning , sale of phaidon etc. . in addition setting up for the accounting for each strategy ie.:
income, estate, gift ,sales and use, transfer excise picasso, 1031 calder. . review and detailed oversite of IRS SEC GAMING NYS. real estate, entity valuations (many) tax filings- disclosures, follow up of grats, trusts ,defective trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank account need to be rationalized, not only having brad step in to children investments . gift taxes, trust , loans, notes. payables. expenses allocations . . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments funds and charities , dividend treatment -important review of transcations relating to BRH (amendments) TRA sale (nuanced) , shareholder agreements, bank loan agreements new bank relationships. . wills, construction accounting and oversite , contracts planning permits etc..employee rules, regs, . checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, . stock options,(ie environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) review of boat expenses plane expenses, depreciation issues refunds etc. . rationalize all outside counsels and accounting firms
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, , Apollo in house counsel.
set up and oversee brokerage accounts at JPM DB GS and thoughfullly trade
. new IT system from top to bottom full time IT person
new accounting system - on- line banking cooridnated with reports . fire drills as per caruci (he sounds good) and . audit system,s . review of john murphy? joslin? dag? eva? .
in house, review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy re:
As new facts on the ground develop , phaidon debra, children meeetings, involvment , trustees adjusted, stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe?. real estate?, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc
you are sitting on over 100 m of cash???!!

Date: Fri, Jan 2, 2015 at 2:55 PM
Subject:
To: Melanie Spinella <[redacted]>
Leon, I decided last week that there was little or no upside in disturbing your well earned holiday

especiaily as you seemed so peaceful happy and smiley ,getting yourself in shape and truly enjoying your family time. etc. however the situation in your family office is unresolved. I am aware that brad starts monday howver, two last days of the year madness. timber.deal not complete no jpm,acct activity no partnership docs , old stock sales not complete , no bank doc redo. no phaidon note restructure, ., no boat expense review. airplane same ,topco midco.etc still not finished (trustee) , projections mixed with fiction. , legal exp out of control. no care for admin, silly (audit). tom conversation with joslin. notes. debra, trustee notes. trustees hiring . bens audit. interest payable made hoopjumping last day of year. after weeks and months. of lectures , gifts to discuss- staff. -houseproject mgmt. . I will continue to try , I had offered ajoint call with eileen before you left. as i said before , joslin takes instructions from eileen. he said it was made clear to him that he doesn't work for me but works for you. . I tried.

Date: Tue, Dec 29, 2015 at 7:26 AM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>
Transaction complete !
. this - in spite of your collection of Elysium misfits. !!!
With Brad out of the office and unable to run his usual interference , the level of his utter incompetence was brought front and center, he may be a step up from Eileen, but if he is , then it is not certainly not by much, . Though you and I have spent many many hours discussing the importance of details and mechanics. I was not shown one document re phaidon,- not one.. Brad wanted to keep it private between he and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is wholly ludicrous - to summarize - the list I provided to Brad last December - things I thought were a priority to get done after consulting with your office still remains virtually undone.

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.
As your friend and in order toturn the page. I will try to be constructive
The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re-do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. ,

decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them

in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.

From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant.

redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist
ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

--
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redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

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Date: Tue, Apr 14, 2015 at 5:53 PM
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To: Melanie Spinella <[redacted]>
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10m paid today to gratitude america, a 501 c 3, willl make last year complete. 20 million paid today ftc . 10 million july 15 5 million sept 30. , 5 million jan 1 for all of 16 . tax savings paid at 37 percent . of net. savings. 50 million credit. net. so 150 million free . 600 savings 225 million owed. - 50 credit, 175 owed. **600 savings 225 million owed. - 50 credit, 175 owed.**

Date: Tue, Jan 5, 2016 at 6:36 PM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>
Transaction complete !

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I preferred to have no financial interactions. I dont have many friends and didnt want money to interefer with our unique relationship. For five years you had the kind but goofy Eileen Alexandersson managing your accounting , legal, investments. reporting, trusts etc. When I told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there is no " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a postion to manage mirage investments I sent you a note saying instead you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me was tasked with hiring new people and as you wanted him to take ownership of the staff,he conducted many interviews. you may recall that as late as may, you told him in my presence that he had had six months and had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions. ,(last nov) 11 million found in dormant accounts and 4 million in the drawer. errors in cash flow both personal and Phaidon. Oversight on new grats first at 22 and then at 19 that were done without my consulatation were resolved only as aresult of my intervention. . 600 million in after tax savings was just accomplished.

With Brad out of the office and unable to run his usual interference , the level of his total and utter incompetence was brought clearly , front and center. He may be a step up from Eileen, but, if he is , then it is certainly not by much, A major difference is that Eileen knew she was over her head. Brad struts his stupiditly whenever he gets a chance.

A critical example. - Though you and I have spent many many hours discussing the importance of care and attention to details and mechanics. with regard Phaidon I was not shown one single document , not one.!! Brad wanted to keep it private between he, and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is totally ludicrous - to summarize - the list I provided to Brad last December - of things I thought were a priority to get done - still remains in the whole unresolved.

The IT, is virtually untouched and is still in desperate need of a format - reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , when either you or brad ask for it - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told by Brad not to share the outside proposals with me - brad has no

idea even as to what questions to ask. he knows little of finance, is bullshitted over by almost everyone in the office. a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant a simple emblematic example- 3 million in deductions Im told were taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the only real question you were focused on ! " were they deducted " not -" is there a benefit " !!
I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing!, a construction project run amok , no budget, the coo fired after only 3 months. , no clue . fyi artspace financials are also a total mess. (no receivables ??). when i asked for a list of what got done and did not, i received the email from Brad basicailly mind you own business. so much was promised. !!!
As in your words probably your closest friend and in order to turn the page. I hope the following to be constructive
Here is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain a paramount requirement 16 months after i emailed you re their importance. THe Phaidon transaction papered and structured as contemplated DOES NOT WORK , its as simple as that. DOES NOT !! I suggest again that you re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re- do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. Halperin has a conflict that should be addressed., A strategy of the use of art should be implemented. . you have tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, I still think you might consider a Rothshcild bank transaction they have 150 b and a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , complex 2 billion in taxes on transaction. ?!

the facts as i see them
in June and then again Sept, we both agreed to a 50% of phaidon payout., then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay

I included in this letter the email i sent to you on April 15, the day i was examining your returns It laid

out my understanding of the compensation for a transaction of the magnitude to the penny of the one just completed. though the number was great it was clear. When it appeared that the details could now be worked out I was the first to say , it is too much money, however.
From day zero I proposed to discount to 50 - 60 million the fair price of the transaction just completed . including Phaidon. . though this amount was already substantially less than our agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of fee outstanding till March) ,I provided as you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any wayt to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the payment associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than originally contemplated) for both transactions . Leon I feel It was remarkably unfair. I wondered whether brad even knew of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction was even begun, and had already been heavily discounted, out of friendship, from our agreement . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon showing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charitable decisions , helped with fincancial statements, gaming commission. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesn't exist
ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . ask them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. separate from making it more secure though you are not a trader with inside info the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describe to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposition in the estate. . etc. ask brad to show you the liquidation of the intervening art space cos? that has been on the table for months. .

Date: Wed, Jan 6, 2016 at 3:44 AM

Subject: Fwd:
To: Jeffrey Epstein <jeevacation@gmail.com>
PLEASE READ CAREFULLY ,
Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of detailed time. I do not know how, and if ,to move forward - our last transaction. a transaction which you saved 600 million in tax. even if as you say it could be 20 years away , (i hope longer) discounted to today is a savings of 300 million . for some reason you chose to ignore our agreements , verbal written and emailed -and decided that it was only worth 8 million dollars to you. . (assuming phaidon -richard happens. the calculation that you can see is a 24 m savings not including artspace and debt benefits- certain to come later .. IMPORTANT NOTE
: the phaidon transaction as currently contemplated will not work . NOT CLOSE
When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I greatly preferred to have no financial interactions. I don't have many friends and didn't want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind, but very goofy Eileen Alexandersson as the sole manager of your massive accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his biz school org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions on the returns. a cashflow that is misleading helped prepare financial statements (april) Oversight on new grats- first at 22 and then at 19 that were done without my consultation and were "resolved " soley as a result of my last minute intervention. . 600 million in after tax savings was just accomplished. (BTW- for some reason you left the 30 million outstanding that I had said should only be done" if" that was my additional fee. and not used for non biz purposes and not art.

Sorry but .,
in June and then again Sept, we both agreed to a 50% of phaidon payout first projected at 20 . but less when artspace and debt taken out, - then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the art space investment will also lead to a write- off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay.

I include below the email i sent to you on April 15, the day i was examining your returns It laid out my understanding of the compensation agreed for a transaction of the magnitude to the penny of the one just completed.ie 600m When it appeared that the transcation would and could go foward I was the

first to point out that our agreement would cost you too much money, therefore
From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.
Date: Wed, Jan 6, 2016 at 12:44 PM
Subject: Fwd:
To: Jeffrey Epstein <jeevacation@gmail.com>
PLEASE READ CAREFULLY ,
In the spirit in which it is sent. our friendship is intact and solid , though ,it has taken a hit.
Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of my detailed time. I do not know how, and even, if ,to move forward - . After months of hearing that you would have no problem paying a large fee if you could only ascertain value. The last transaction. a transaction which you saved over 600 million in tax. declared bullet proof by your attnys, and even if you want to disoccount for its future realization, creating a savings of over 300 million real dollars. For some reason you chose to ignore our agreements , verbal written and emailed -and at the very last minute , after the deal was complete decided that it was only worth 8 million dollars to you and your family. . (assuming phaidon -richard happens. there is a 24 m savings not including artspace and debt write down benefits- certain to come later .. IMPORTANT NOTE
: the phaidon transaction as currently contemplated will not work . WILL NOT !!

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I greatly preferred to have no financial interactions. I don't have many friends and didn't want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind, but very goofy Eileen Alexandersson as the sole manager of your massive accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help

convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his biz school org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions on the returns. a cashflow that is misleading helped prepare financial statements (april) Oversight on new grats- first at 22 and then at 19 that were done without my consultation and were "resolved " soley as a result of my last minute intervention. . 600 million in after tax savings was just accomplished. (BTW- for some reason you left the 30 million outstanding that I had said should only be done" if" that was my additional fee. and not used for non biz purposes and not art.

Sorry but .,
in June and then again Sept, we both agreed to a 50% of phaidon payout first projected at 20 . but less when artspace and debt taken out, - then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the art space investment will also lead to a write- off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay.

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more details

From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that

you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.

Date: Fri, Jan 29, 2016 at 2:39 PM
Subject:
To: Melanie Spinella <[redacted]>
you've agreed that
Your office is a multi billion dollar responsibility. your children will inherit it , in order to oversee their financial lives- I feel for you, truly ,but the facts are the facts, your ceo (Brad) has provided one bad document after another for over a year , no getting away from it, , bad cash flows no new IT, each time with " its gettting better " no in fact -! its not. - the excuse, that Brad is not the numbers guy, is ludicrous. of course he didnt actually prepare the statements. - no ceo would ,- but over and over he presented them to you and me , after , holding them back for his personal review multiple times and after multiple drafts. weeks of his editing, the consistant but "inexplicable "missing the obvious serious errors . (gaming) inaccuracies, (cashflow) and mistakes (tax returns). why, ?! the simple answer is that at best, he is a c minus, (note. I, like you ,also give points for effort.)- ! an elegant art partnership gone fallow. ??!!I and its core reason to exist. not used ? no docs for plane?, still ! why? no docs for decantings why? the docs for deal 1 received last night , " no docs at all for deal 2, the biggest " . why wasn't Tom brought in , after 4 times of my incessant reminders i spoke to him , he knows little of either transaction except for over view. never saw pahidon anything except projections until yesterday ? ?and this after your clear admonition etc. re the trading accounts no activity, at all,

Barry Cohen is great. more like him please .
you asked , - I did my best trying to train your brad chosen people in the face of my telling you that they were never going to be more than c-minuses, thousands of emails thousands ? Brad at its head . you can't as a ceo, have an accountant give you multiple pages with the most important numbers missing altogether and not notice, you and I saw the errrors right away ,as did my very junior bookeeper after only a cursory glance. He told me he didnt know the details of his note? ! , my guess is that he wanted to pay less. no more than that, any other story is blather. its silly. Talk to richard yourself.
re your estate. Yes another Brad issue - your will, needs revision. the tenants in common structure I assume Alan has carefully walked you through. it is way overdue, needed and exciting. I won't list the more serious issues in an email but we can speak over the weekend.

How can I help? We agreed at the time when you hired Castrucci , that when you fired him, I would bear no responsibility because it was clear that he shouldnt be hired. brad and you both said ," its on us", but... the equivalent of your art consultant pointing to a picasso and calling it a renoir. then a brancusi and calling it a michaelangelo. those were the types of erros that i saw immediatily, you said give them more time. at least they saw it was a painting and not a photo?

being weaned of our biz /pay realtionship has been our mutual goal. However since novemebr, you chose to do so by ignoring' our agreement re, phaidon,and your oft stated commitment to me of large payments for large value, (37 percent was our number). chose to pay me a number picked by what appears to be only by whim,- have yet to justify it except for telling me that you and Brad Karp talked..
.

What should we do? the next two years in biz world appears to both you and I , very fragile. Im happy to have brad sit in ?

Date: Thu, Oct 15, 2015 at 10:38 PM
Subject:
To: Melanie Spinella <[redacted]>

Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
today is Oct 15
With your full knowledge I paid out 8 mil to my staff before june, . so i guess I can safely assume that after consideration of all the things I did for the entire past year separate and apart from your unique free "after care" concept. , what you thought was ultimately fair was the contribution of 5 million to a foundation and a total of 2 million dollars to me.

Date: Thu, Feb 4, 2016 at 10:01 PM
Subject:
To: Melanie Spinella <[redacted]>
josh's arrival cut short our needed conversation. I understand we have a difference of opinion. friends sometimes disagree, I shook on the 20 so you have no further obligation, none, I am willing to have brad karp hear both sides. as my view , you and i had an agreement. on phaidon /publishing, and then a long standing what you say is 28 , which is correct AFTer TAx. , 37 pre. . that was our numbers. I was clear what i thought the transactions were worth. far less than full. alan etc. , had you said i will pay you only 20 . i would have said ill pass. you never told me that 50-60 the number that i put on the table at the very beginning was not right. you asked that i lay out my plan step by step. and what i believe would have been the fair thing to do is say to me, I will pay you only 20 if you do as i ask, not tell me for the first time only after i laid it all out . had it not been you, i would have required payment in escrow. BEFORE fyi the reason I sent you an invoice so that if you decided that you wanted me to continue this year . it would be applied to last years income. I think today was a beginiing for you. I am glad I will meet wendy the 23, rd, . separate and aprt from being your sounding board for personal issues, I do not see my involvment moving forward.

Date: Wed, Feb 10, 2016 at 12:56 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
this was sent four months ago, nothing has changed
sent oct 15. before big transaction.
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to

pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
Date: Thu, Mar 3, 2016 at 3:31 AM
Subject: ask alan why he hasnt explained this to you since novmebr
To: Melanie Spinella <[redacted]>

Tenancy in common is a type of shared ownership of property, where each owner owns a share of the property. Unlike in a joint tenancy, these shares can be of unequal size, and can be freely transfered to other owners both during life and via a will. Even if owners own unequal shares, however, all owners have the right to occupy and use all of the property.
Date: Sun, Mar 13, 2016 at 12:55 PM
Subject:
To: Melanie Spinella <[redacted]

The fire drill documents received should be the final nail in the coffin of Alan and Ada, . It is inexcusable, , ludricrous and in brads words "insane "or yours, " unexplainable" that the two people that you refer to as your estate attnys , NEVER EVER took the time to actually read the documents that have the biggest efffect on your family and estate upon death or disablity, its impossible.!!! IMPOSSIBLE . after telling me that they were confident that everything had been read , and after years , of you telling me that Im not an attorney, it is clear that my telling you that you have c quality people was over generous, , I received a first draft of the summary of documents. you should read them for yourself. . executive committee issues. , unclear tax. contradictory provisions,your reps having to rely possibly on a fall back to delaware law to protect your interests, even suggesting that even if they would like to fall back , in some instances - no case law. other crazy- provisions that are personal to you , instead of you and your successor ? two pages of " open to interpretation" .or aha , maybe something is wrong! as ie, your rep, after death has no right for information on BRH? ! if you and another founder are dead , the exec commitee has no decision authority, if josh and mark want to fuck your heirs, its easy, black family partner docs dont deal with successionl YOU deserve better . fyi, after a month of brad ada and alan ,on the project, still not willing to share with me a final, they are all embarassed. and full of excuses .

It will take wendy and a new team 6 to 9 months to put your house in order. , new cash flows. new accounting system, airplane rethought, , you new hires can find deals , they can familiarize themselves with your current investments , but should not be doing the accounting for them, .
your will is still not amended, ?! the tenants in common not even explained to you. if something happens to you and debra, no real direction for the foundation. . etc

--
Date: Mon, Mar 21, 2016 at 4:17 AM
Subject:
To: Melanie Spinella <[redacted]>

glad to see you are personally on the mend - as well as the fence. -- As you know i dread money discussions with you-- however -we should address the issue of what you would like to do moving forward. re- do family office, accounting trusts , estate and apollo agreements . Along with your " payment " last year we agreed . no further obligations on each side. yes, i continued to moan. I realize that though I ve done quite a lot this year already , it is not your responsibility. . As you often like to remind me- you've paid a great deal of money to date. that being said - If you want my involvement moving foward, I suggest you pay my regular l fee of 40 m . 20 now . 20 on completion or as per the invoice issues at the end of last year pay 30 all at once. -

To help out . im keenly aware of your current cash position. so I will consider an in-kind payment - real estate (Miami), ,art , financing of my new plane (allows you to spread over years or of course the preferred cash. Get rid of Castrucci,it is over a year since the same story of findign the right guy at the top. you entire accounting needs to be re done. , office downsized, reporting re done. meetings to recitify, categlorize , the various docs re appollo , rowen , suydam, alan etc. Brad can direct investment guys, (hopefully) my people will be in your office for a few months . reorganizing IF you decide not to pay I fully understand, as I m sure you will re my no longer spending any serious time on these things. Of course re any non financial issues , I am always there for you and will continue to be the best friend I can be .
Steve jobs said that everyday he woke up , and asked himself , if he knew he was going to die tomorow , would he do the same thing that he had planned for the day- he wanted to check that he was doing things that he really wanted to. after three days of getting back an answer of no, he would change what he was going to do. . he also did not believe in LONG term plans. I dont think either one of us will figure out what we want to do long term so my thinking is that we should try to have fun everyday, and welcome serendipity.

I think another trust and estate lawyer should be brought in to deal with the issues of how not to allow your family to get screwed by your partners on death . Alan, for years told me that paul weiss had drawn the docs so no issue but when recently pushed by my new fire drill he asked akin to draft .?! PLease ask brad about why he keeps talking about flow . I dont know what he means, its so silly . . this is only about money control and protection .
I am leaving monday night now. free to speak in the afternoon

Date: Thu, Apr 28, 2016 at 1:55 PM
Subject:
To: Melanie Spinella <[redacted]>
Lets start. I am aware that you are currently angry at the world. . me, karp wechsler. even yourself, all willing absorbers of the current high heat. (though you ,calling me ,Debra , did take away some of the sting) I am sorry to see you this way.
emblematic ; I was asked to opine on whether to hire castrucci. an hour after I gave a preliminary yes. . I called you then texted you that i had thought more about it and changed my mind. The next day brad called and asked for my vote. I told him ,in no uncertain terms it is a no , I categorically vote no. I called you . you came to see me . I said it was a bad idea. you said you were going to do it anyway , I said and followed up in writing IT IS A MISTAKE . and added Please don't come back to me with anything suggesting otherwise , you and I should be clear I think it is wrong . A very strong NO . you of course can hire whomever you like.

early on I told you I thought Tom remarkably careless . Eilleen goofy and your art lawyer not well informed to say the least. you told me Tom was a senior partner. Eileen had headed the trading desk , and Ralph Lerner had to know what he was doing as he wrote the book. . I said I thought you deserved better ,should get better people and no , I am not an HR person. yesterday you told me that the reason you have hired whomver you could find was to avoid being dependent on me. a decision by far , not the best place to try to save money)
Joslin- who you say I hired . I neither found nor hired. With a two person given choice I approved joslin over some woman that eileen preferred. against my repeated advice you and eileen decided the pay range at under 300k . I told you at that time that I would personally pay the difference for a higher quality person, that was years ago . I have sent over a hundred emails to you clearly saying he needs to be closely managed by better professionals. initially , that referred to Eillen and Ada.and after, brad. john etc. THere are many emails each and every month from me, telling you , he is slipping failing cracking fragile. . crazy, nuts, heading towards incompetence. Unless YOU- TAKE ACTION! when I pressured him for accurate numbers , you told him, to tell me, that he works for you and NOT for me. . When I continued to press for accuracy from your office , you told me that they were now all afraid of me and i should let brad communicate any requests, (you now tell me " we know what Brad is"?). When I told you you office needs to be reviewed and changed you told me i was being destructive rather than constructive. when i ultimately confronted joslin, in an attempt to protect you, told him that his numbers were wildly inaccurate , you told me that i had caused his ultimate resignation and now have an affirmative obligation to fill in the resultant gap.
I did give you a bad number , and apologized as soon as i realized it. an error that was an embarrassment for me , the fact that that the accurate number is still way below what you agreed to pay , has fallen by the wayside.(the preposterous argument that the end of year transaction was Alans idea , which you now know was not true and that me not receiving Phaidon documents was unexplainable. was your justification though, for non - full payment)
Hopefully You will recall that when you initially asked for my help. I declined repeatedly with the admonition that that having a financial arrangement is fraught with danger and could complitcate our friendship (as you will be unhappy paying what you will view as a large sum. while choosing to ignore the financial benefits,). In Bedford , I repeated my concern. THe current circumstance is distressing to me , I have done my utmost to keep you safe. and will continue to do so. reckless choices in accounting or otherwise does not bode well. at each turn I have put your interests first , including in some instances attempting to fight your choices.
your current circumstance needs nuanced attention. as you know, there are a few areas with very serious consequences. whether it be , having Ada , form grats without review, brad doing phaidon without review. payments make without review.merely in order to be weaned , is one more high risk choice. review of outside accounting firms , CANNOT be done by brad. to have your accounting dept sit in on Alans trust accounting lecture . in order to learn the filed is reminiscent of elieen reading the tax regs. (she also was going to take a course)
I am here in New York today. should you like to resume

Date: Mon, May 2, 2016 at 12:51 AM
Subject: Fwd: Valuation Discount
To: Melanie Spinella <[redacted]>

Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

---------- Forwarded message ----------
From: **Halperin, Alan S** [redacted]>
Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan

Date: Tue, May 10, 2016 at 12:38 AM
Subject:
To: Thomas Turrin <[redacted]>
did you get the agent?

Date: Wed, May 11, 2016 at 1:50 PM
Subject:
To: Brad Wechsler <[redacted] Melanie Spinella <[redacted]>
grats 3,4, 5, 6, also need accounting documents and backup. year 2014. other info request to follow

Date: Wed, May 11, 2016 at 2:19 PM
Subject: Re:
To: "jeevacation@gmail.com" <jeevacation@gmail.com>, [redacted]
[redacted]>
A couple of questions:
1. Jeffrey-you saw the format in which we organized the back-up for year one of grat 1 (quite thick/alot of back-up).
Does that format work (for you and internal use) or do you want it simplified/modified. Let's discuss.
2. Since this will take the focus and effort of a lot of people (just to pull and organize the various records...both legal and accting, I'd like to tell the staff that we are answering an "information request" from the irs on the grats. It will generally be helpful

for them to know why the work is impt.
You and leon ok with this?
Will call you to discuss.

Date: Thu, May 12, 2016 at 12:17 PM
Subject: tight schedule lets try a set time to speak
To: Melanie Spinella <[redacted]>
Leon, you hired me to produce a work of art. it was not inexpensive. the value far exceeds any other piece in your collection.- by FAR . It took me 30 years to be able to craft such a work. I understand your desire to modifiy my work, in doing so you have brad telling me , just a bit more red., here let me show you, you yourself pick up a brush a add some strokes. you have joslin spray water on it to maintain it. I vigorously complain that joslin in ruining my work . . you describe me as zeus, i describe it as artist and a reaction to his work being ruined. however Im aware that you own the work and you have the right to paint over it. tear it up , put it in the closet in the basement . its yours.
I was told that Toms office is sending someone in ,or some people in, to review "some things." brad told me ,the partnership accounting. I know absolutely nothing more than that. though bringing in his team was my idea . Having them review things without even asking for my input , or let alone my direction ,is ridiculous. but.. I guess you wanted to save money. ?
The audit has brought to the fore the lack of your office quality that i have been violently squawking about. ie . children playing with works of art. . It is inconceivable to me that John castrucci is still there , joslin part time, but relied on . joe error prone and brad a corporate bandleader talking about the office's finance team, accounting dept, and directing wendy to do things that are clearly not in your interest. (saving money again ?) its nuts!! . a still non-existent IT dept. impossible , it was the first thing on my list of things that were needed to be done. Still no trading accounts to speak of , though its prophylactic quality has been discussed over and over during the past three years . computers do not read Page Six . the women at the IRS do. ! you said your motivation in keeping this group of part timers was a consequence of the high cost of my artwork. . the unfortunate result was easily predictable. - now
If you want my and my atelier to continue, I will oversee the audits. take charge of the TRA BRH assignments and review 2012 amendment options!!(note :your redo of the estate fire drill has not progressed very far). Lots of paper needs to be collected and reviewed, At MY direction. the outside team will be brought in at my expense working for me and you. coming in for interviews and reviews, . sucession, technology, tax and compliance. investment reporting , , computerized timelines for filings etc. . household classifcations and reporting with a system of best practices.
My goal is clear - to end, not extend , our financial interactions. you will have a machine that works , it will not be complexto oversee , to create it, is some thing else . Unfortunatley for us both, the price for my works has not changed since day one. 40m per year, I m willing to discount it to 35 as I did give you a bad number when asked and should pay an embarassment fine. Im also aware, as you made perfectly clear . that you have already paid what you consider a great deal of money, for my work , but again its value exceeds anything else by far in your collection at a cost less than agreed upon. . please also remember that you and i agreed no more demands on my time after the last payment for the big transaction.
OR, you can decide that brad , tom , and whomever else you choose can screw with my work and they can oversee your audits . they are both aware and sensitive to the issue at hand. alan could be brought in but i would be extra careful having paul weiss given access to entire story.
_-On an unrelated note- you recently seemed shy to discuss certain things. , please be assured I make no judgement on any of your activities , whether or not i agree with them . not my role I am always on your side on the table. I hope your personal life quiets. you 've had a rough 15 months.

11:21 PM (13 hours ago)

to me

Jeffrey,
I created applications one week ago at NDCAS (doctor of naturopathic medicine centralized application service) and VMCAS (veterinary medical college application service) ,working on my application material , requesting evaluations letters and etc.
On Tuesday I am going to the job interview, working on my resume today .
P.s.- I hope I will get finally the results from Chinese proficiency exam today /tomorrow.

On Sat, 7 Apr 2018 at 07:54, jeffrey E. <jeevacation@gmail.com> wrote:
no concrete progress. for a year. sorry, it cannot go on this way
Date: Wed, Jun 1, 2016 at 5:41 PM
Subject:
To: Melanie Spinella <[redacted]>
As i said yesterday, pointing out places where i think my friend might be taking unnecesarry risks has become tedious and trying. Structures that have been set up 2 years ago. were done so to give you protection and flexibility, NOT FOR ME< for YOU they required hiring stafff that could manage these complex entities. you told me over the past two years that as i set them up i should be responsible for their operation. That was never the deal , never. I have heard after -care etc for quite a while. in dec when you unilatierally decided to pay me much less than our agreed amount , we agreed NO MORE money discussions NO MORE after care. The silliness has reached its pinnacle when you suggest i am responsible for the lack of sophisticaiton and thoughtfulness of the 1031 transactions that NO one even told me about. asked my advice or gave me any notice at all before the fact. same as the structure for the CAlif house. I would remind you , though Heather is great, it was not she that modified the gagosian contract to give you the protection that resulted in your having no liablity, though you tell me she has done these things many times.
3. Remind me to talk to you about MR

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?
There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax,
He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .

. Asking me who to hire , estate attny tax people etc. :
I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.
That being said , the tasks at hand are the following.
You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,
a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note
; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that
I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge
If I can find the time to work , on your project , which is not by any means certain as I have said , I

hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

11:45 PM (13 hours ago)
to me

T

im in paris now

Date: Sun, May 1, 2016 at 6:51 PM
Subject: Fwd: Valuation Discount
To: Melanie Spinella <[redacted]>
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.
Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>

I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan

Alan S. Halperin | Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas | New York, NY 10019-6064

[redacted] | www.paulweiss.com

(10 hours ago)

to me

Jeffrey
Pete informs the GIV is completed,.

Thx,
Larry

Date: Tue, Nov 15, 2016 at 6:13 AM

Subject: Fwd:
To: Melanie Spinella <[redacted]
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?
There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax,
He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .
. Asking me who to hire , estate attny tax people etc. :
I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

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mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,

a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note

; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

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I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge

If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

1On Apr 6, 2018, at 11:15 AM, Jeskewitz, Jeannine [redacted]> wrote:
I'm in touch with Lesley and [redacted] we will work together on these reservations.

All my best,

Jeannine

On Tue, Apr 3, 2018 at 5:43 PM, Lisa Emelia Svensson <[redacted]> wrote:

Air France has a strejk ... so French
Trying to rebook later in the week Will let you know

3 apr. 2018 kl. 16:29 skrev jeffrey E. <jeevacation@gmail.com>:

im in paris now

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>

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I expect as a friend you will understand that
I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge
If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

Date: Mon, Aug 29, 2016 at 1:41 PM
Subject: I know you have a lot on your mind.but..
To: Melanie Spinella <[redacted]>
sent to you JAN 29th 2016

you've agreed that
Your office is a multi billion dollar responsibility. your children will inherit it , in order to oversee their financial lives- I feel for you, truly ,but the facts are the facts, your ceo (Brad) has provided one bad

document after another for over a year , no getting away from it, , bad cash flows no new IT, each time with " its gettting better " no in fact -! its not. - the excuse, that Brad is not the numbers guy, is ludicrous. of course he didnt actually prepare the statements. - no ceo would ,- but over and over he presented them to you and me , after , holding them back for his personal review multiple times and after multiple drafts. weeks of his editing, the consistant but "inexplicable "missing the obvious serious errors . (gaming) inaccuracies, (cashflow) and mistakes (tax returns). why, ?! the simple answer is that at best, he is a c minus, (note. I, like you ,also give points for effort.)- ! an elegant art partnership gone fallow. ??!!I and its core reason to exist. not used ? no docs for plane?, still ! why? no docs for decantings why? the docs for deal 1 received last night , " no docs at all for deal 2, the biggest " . why wasn't Tom brought in , after 4 times of my incessant reminders your admonition etc. the trading accounts ?

Barry Cohen is great. more like him please .

you asked , - I did my best trying to train your brad chosen people in the face of my telling you that they were never going to be more than c-minuses, thousands of emails thousands ? Brad at its head . you can't as a ceo, have an accountant give you multiple pages with the most important numbers missing altogether and not notice, you and I saw the errrors right away ,as did my very junior bookeeper after only a cursory glance. He told me he didnt know the details of his note? ! , my guess is that he wanted to pay less. no more than that, any other story is blather. its silly. Talk to richard yourself.

re your estate. Yes another Brad issue - your will, needs revision. the tenants in common structure I assume Alan has carefully walked you through. it is way overdue, needed and exciting. I won't list the more serious issues in an email but we can speak over the weekend.

How can I help? We agreed at the time when you hired Castrucci , that when you fired him, I would bear no responsibility

Date: Thu, May 12, 2016 at 6:17 AM

Subject: tight schedule lets try a set time to speak

To: Melanie Spinella <[redacted]>

Leon, you hired me to produce a work of art. it was not inexpensive. the value far exceeds any other piece in your collection.- by FAR . It took me 30 years to be able to craft such a work. I understand your desire to modifiy my work, in doing so you have brad telling me , just a bit more red., here let me show you, you yourself pick up a brush a add some strokes. you have joslin spray water on it to maintain it. I vigorously complain that joslin in ruining my work . . you describe me as zeus, i describe it as artist and a reaction to his work being ruined. however Im aware that you own the work and you have the right to paint over it. tear it up , put it in the closet in the basement . its yours.

I was told that Toms office is sending someone in ,or some people in, to review "some things." brad told me ,the partnership accounting. I know absolutely nothing more than that. though bringing in his team was my idea . Having them review things without even asking for my input , or let alone my direction ,is ridiculous. but.. I guess you wanted to save money. ?

The audit has brought to the fore the lack of your office quality that i have been violently squawking about. ie . children playing with works of art. . It is inconceivable to me that John castrucci is still there , joslin part time, but relied on . joe error prone and brad a corporate bandleader talking about the office's finance team, accounting dept, and directing wendy to do things that are clearly not in your interest. (saving money again ?) its nuts!! . a still non-existent IT dept. impossible , it was the first thing on my list of things that were needed to be done. Still no trading accounts to speak of , though its prophylactic quality has been discussed over and over during the past three years . computers do not read Page Six . the women at the IRS do. ! you said your motivation in keeping this group of part timers

was a consequence of the high cost of my artwork. . the unfortunate result was easily predictable. - now

If you want my and my atelier to continue, I will oversee the audits. take charge of the TRA BRH assignments and review 2012 amendment options!!(note :your redo of the estate fire drill has not progressed very far). Lots of paper needs to be collected and reviewed, At MY direction. the outside team will be brought in at my expense working for me and you. coming in for interviews and reviews, . sucession, technology, tax and compliance. investment reporting , , computerized timelines for filings etc. . household classifcations and reporting with a system of best practices.

My goal is clear - to end, not extend , our financial interactions. you will have a machine that works , it will not be complexto oversee , to create it, is some thing else . Unfortunatley for us both, the price for my works has not changed since day one. 40m per year, I m willing to discount it to 35 as I did give you a bad number when asked and should pay an embarassment fine. Im also aware, as you made perfectly clear . that you have already paid what you consider a great deal of money, for my work , but again its value exceeds anything else by far in your collection at a cost less than agreed upon. . please also remember that you and i agreed no more demands on my time after the last payment for the big transaction.

OR, you can decide that brad , tom , and whomever else you choose can screw with my work and they can oversee your audits . they are both aware and sensitive to the issue at hand. alan could be brought in but i would be extra careful having paul weiss given access to entire story.

_-On an unrelated note- you recently seemed shy to discuss certain things. , please be assured I make no judgement on any of your activities , whether or not i agree with them . not my role I am always on your side on the table. I hope your personal life quiets. you 've had a rough 15 months.

3. Remind me to talk to you about MR

Date: Mon, Sep 19, 2016 at 8:56 PM

Subject:

To: Melanie Spinella <[redacted]n>

dec 2015

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.

As your friend and in order toturn the page. I will try to be constructive

The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank

loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re-do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them
in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.
From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist
ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

Date: Thu, Sep 29, 2016 at 11:47 AM
Subject: new info
To: Brad S Karp[redacted], Melanie Spinella <[redacted]>
brad, leon.
After I spoke to you both, I excused myself from a dinner with some heads of state to walk into the bathroom to make some calls re 8865. I wondered whether any group that we could assert had control had filed in the past years. I called Fenn and he told me- yes.???!! he said that on friday , for the first time he learned that AGM was not delinquent at all. and had filed. !! I asked why no one had ever told me or given me the purported justification for no filings in the past for the founders. and he said Well, sorry , it was discussed on fridays call. ? the call i was not on . not invited to ,the call wechsler didnt listen in and joslin didnt transmit , if it is true. Im also now told there is a note from Deloitte re 13 and 14 that says the founders DO NOT have to file. but fenn could not tell me who wrote it and said Deloitte says to ignore it. , that s why they are pushing now.

steps 1 8865 has many exemptions for filing. let see if we can find one . (an elegant position might be josh and agm if he is panicked and leave us out). The requirments are FACT specific , so without the facts we still have nothing. fenn said he has now put someone on it
2 leon , I suggest need to focus on 1040 , 2015. , we may even consider filing the minimum 8865 , and wait until we are sure of our specific requirements, and file an amendment for 15 as well as past. no harm no foul\

Date: Thu, Sep 29, 2016 at 12:34 PM

Subject:
To: Melanie Spinella <[redacted]>
Leon, I am on the verge of giving up. sorry. I cannot deal with the major incompetence of your family office. I have been vocal about change. you have made none. john castrucci, still involved etc. the bullshit corporate speak, of -our accounting dept , our bookeeping dept our finance dept, the comptroller . now gives me responses that --we have heard from Deloitte , I ask, who at Deloite?. -- dont know , the new team at Deloite says the old team was wrong ! what new team? what old team? -- dont know. . Pwc agrees who at PWC , ? ? I ask ,- dont know. BDO is almost finished - who, ? dont know; . akin gump agrees. . Fenn? - not sure.
I have spoken to each of karp, pezner, fenn, brad. joslin, bodian. multiple times . like your office no one in charge with knowledge. so rudderless hysteria . silly beyond belief as this issue is a non event. other issues have been shunted aside that have real consequences. I know you are jet lagged. I am schedule tightly today , but can free myself for 15 minutes if you want . if so have melanie talk to lesley
--
Date: Monday, 3 October 2016
Subject:
To: Jeffrey Epstein <jeevacation@gmail.com>
alan told me you are going to meet tomorrow morning . He has asked me to review the presentation. I suggest you see for yourself . since you argued that he was partial architect of the big transaction. you will see. -- bad numbers. unclear assumptions. opaque presentation. no alternatives. no review of agreements. standardized schedules without names , handed out to the dentists. . NOT even up to date inputed numbers , why in the world would they present numbers 4 months old. ??!!/ it is only imputs. dividend assupmtions. a mix of silliness. (art given to museums is listed as cash out). discount rates of 13.05 %. what type of number. . 100k for illness expense and funeral, in a spread sheet of 5 billion dollars.? insurance numbers left out. says debra owns half the boat? taxes? all a waste of time
A clat probabaly makes sense. however who runs it, if interest rates change. did you give them the assunptions on growth?

Date: Sun, May 1, 2016 at 6:51 PM
Subject: Fwd: Valuation Discount
To: Melanie Spinella <[redacted]>
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan

Date: Wed, Nov 9, 2016 at 10:27 PM
Subject:
To: Melanie Spinella [redacted]1>
sorry, I can call on thurs or sit face to face fri afternoon. . I will be in ny until monday morning.
decisions- questions good news . I have a really elegant solution for most of the following, 1 gift tax. cash or in kind . 2 . 1031. 3 fire drill brh tra etc. 4 . xxxx 5. 8865 s.
tax planing running out of time. . 7 restructure office . barry? brad told me he thought you had acknowledged high value this year. gift tax audit etc. , . April, Oct. . returns. manage joslin , who is still running your tax dept .
you and I need not rehash old postures, its tedious - I would ask that you tell me if you intend to pay for the work that was done, and for the work you expect to be done, . thanks

Date: Tue, Nov 15, 2016 at 12:13 PM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?
There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax,
He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .
. Asking me who to hire , estate attny tax people etc. :
I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the

foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,

a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note

; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that

I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge

If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

Date: Tue, Nov 29, 2016 at 1:27 AM

Subject: so there is no misunderstanding
To: Melanie Spinella <[redacted]>
I have told the brads and barry,- I am done. its not a negotiation , out !! - fyi given my carlyn joslin castrucci, admonishments,- though my involvement in those - in one instance only gave a name - in another only given an eileen dictated choice btween two 250k preparers. and for castrucci, I actually sent emails that i take no responsiblity for his being hired. - however you felt strongly that I should be saddled with their outcomes .even with brad wechsler , i again said two months in, Leon, he doesnt get it. I tell you this so that you will understand that I will not interview, recommend or vet any new hire. A story - In 1993 trump and I had a friend that kept telling his pilots how to fly , and when to fly , he couldnt help himself from hiring morons as co pilots, and maintenance people based on cheapest rates. Donald and I tried and tried to talk some sense into him, to no avail. Donald and I were in aspen, sitting at little nells. when the friends plane crashed into the side of aspen mountain , klliing him and all on board,- Trump looked at me and said without a blink , I guess NOW he wishes he would have listened to us.- a metaphor for your office. . . had we not waited to the very last hour having had a six month window and tens of unasnwered text and emails re decisions needed including the 1031. you would have saved way more than you often feel obliged to argue about. . silly but i reallize you are stressed. Barry will need to sit with brad for months, to absorb all the co's , structures. cash flow, financial statments etc. I will present barry my thoughts on the overall redo , it will be the exact same email that i presented to you and brad two years.ago . accurate numbers first. and foremost. . (last week gaming report stil funky). IT etc I pointed out some of the more glaring errors to barry to give him a flavor of what is to come.

Tuesday if you like we should discuss Giacometti , and pesner . difficult to finesse him if they are filing documents that you won't . these ridiculous conversations with tons of people on the phone , removes any claim you might have to not be considered a WILLFUL NON-FILER . (after youve been told by attnys and pwc that you should file in writing , you have NO choice) .. worst possible result - including serious penalties up the kazoo.

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella <[redacted]>
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.

In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.

I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I

thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO

Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.

Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .

We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Tue, Mar 21, 2017 at 6:58 PM
Subject: Fwd: request for docs - AAP
To: Richard Kahn [redacted], Darren Indyke <[redacted]>
not for now. but maybe later ,
---------- Forwarded message ----------
From: **Ada Clapp** <[redacted]>
Date: Fri, Mar 17, 2017 at 10:45 AM
Subject: RE: request for docs - AAP
To: "Barry J. Cohen"[redacted], "jeffrey E." <jeevacation@gmail.com>
Cc: Brad Wechsler <[redacted]>

Attached are:

1. Executed Version of AAP

2. Most Current Draft of AAP
3. Redline of 1 against 2
4. Summary of AAP from Vanessa Eng

-----Original Message-----
From: Barry J. Cohen [[redacted]
Sent: Friday, March 17, 2017 8:07 AM
To: jeffrey E. <jeevacation@gmail.com>
Cc: Brad Wechsler <[redacted]>; Melanie Spinella <[redacted]>; Ada Clapp <[redacted]>
Subject: request for docs

I will organize. Copying Ada who has a lot of this.

Sent from my iPhone

On Mar 17, 2017, at 7:25 AM, jeffrey E. <jeevacation@gmail.com<mailto:jeevacation@gmail.com>> wrote:

can you send me latest bank art loan docs. BRH agreement . TRA agreement , agreement amongst shareholders. . , org chart for phaidon , art space and regan arts. . . , ownership only, . - list of invetsments , ownership of l.a. house.structure, / list of art by highest gain. . -

Date: Tue, Dec 29, 2015 at 7:26 AM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>

Transaction complete !
. this - in spite of your collection of Elysium misfits. !!!
With Brad out of the office and unable to run his usual interference , the level of his utter incompetence was brought front and center, he may be a step up from Eileen, but if he is , then it is not certainly not by much, . Though you and I have spent many many hours discussing the importance of details and mechanics. I was not shown one document re phaidon,- not one.. Brad wanted to keep it private between he and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is wholly ludicrous - to summarize - the list I provided to Brad last December - things I thought were a priority to get done after consulting with your office still remains virtually undone.

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in

order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.

As your friend and in order toturn the page. I will try to be constructive
The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re-do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them
in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.
From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was

known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist
ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella [redacted]>
Cc: Brad Wechsler <[redacted]>
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay

etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

Date: Tue, Nov 3, 2015 at 10:45 PM
Subject:
To: Melanie Spinella <[redacted]
okay, its time for you to decide how you would like to move forward. (fyi get your money from the 1031 . the screw up is only one of many,) If you decide to move foward on decanting. phaidon, note basis estate update , each requires many carefully orchestrated detailed steps. and precision . there are hundreds of millions in saving if done correctly and a huge mess if not. If you want me and my colleagues to do it , oversee it paper it and guide it, you should tell me. It is a big undertaking . If not , ok .. Brad and your crew can do it. I will have no real further involvement apart from confirming the outcome of my proposed structure, I will not risk the admonition of- they thought you said, they thought you meant, they understood it to be. but they said you said, (i e ,I asked at our meeting that accounting be done properly for bens house , what came back was ada thought that I meant that we needed to go back to the 97 trust and give him a full third party accounting of where his money had gone??!! I kid you not). I dont think brad should talk to jane heller without a fully fleshed out plan in place and even then it should be you.

Date: Mon, Nov 30, 2015 at 11:21 AM
Subject: agenda
To: Melanie Spinella <[redacted]>
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Fri, Dec 4, 2015 at 8:07 AM
Subject: Fwd: moving forward
To: Melanie Spinella <[redacted]>
I had forgotten that Alan was actually at the table when i explained my note deal to you. it was at the end of the meeting described below. . as you will recall , not once , not even a peep did alan suggest contemporaneously his hand in the crafting, in fact brad said it was an idea. that HE brad, HAD HAD , from the begiining . my emails between alan and I that you can read , further confirm authorship. Im sure you recall the obnoxious tooting when alan said he agreed with my plan. .

Date: Mon, Nov 2, 2015 at 10:03 PM
Subject: moving forward
To: Melanie Spinella <[redacted]>
I have mixed emotions about what transpired today. really, You saw first hand in nauseating detail what i have been saying to you for quite a while now. Joslins answers were totally incomprehensible.

the charts he prepared unreadable. Brads defensive posture was at a minum very surprising . He and I have recently gotten along quite well , I thought . Neither Joslin or Brad understood a 180 million dollar number . no cash flow after weeks of requesting? odd. when you suggested that heathers behavior was emblematic of a sloppy office , brad said lets not talk about emblems??! bill pay , admittedly no change for the year. . plane not done. though it was the only thing i suggested doing first in july . . I sent you a list of 10 consultantts. brad said three, . i didnt want to push it. I was shocked that brad was opining on things he knows little or nothing about. tax issues. 1031. neg basis , note payoffs (the same idea he said he had had from the beggining??!!) . answers re LBF holdings that can be corrected (they cant) . valuations that have never been read. . When we met in your lobby he seems surprised that i was there. I dont know if he felt somewhat sandbagged. . .
the savings on the note payoff is aprrox 33 % of 1.8 billion. real money if you do phaidon which i see no reason not to . if later josh and ben want to buy it back with you or without you they can. i will walk you through the structure one on one. . the losses will offeset the calder gain as well as apollo gain.
Im aware that seeing what you saw frustrated you. I felt badly for you.

You wanted a contingent deal. real value. etc. I will not of course hold you to your deal . . its silly. its not how i work or a reflection of our friendship. my proposal is as follows. I want away from your buisiness , but at the same time leaving you in good shape. I think you should pay the 25m that you did not for this year. for next year its the same 40 m as always, paid 20 in jan and 20 in july, and then we are done. I will give you advice and counsel but new people will be running your operating machine. I will oversee all the work that needs to be done you and I will hire new people , and it will be self running. (it was may in my house when you told brad it had been 5 months and you were getting fed up) I will set up a parallel . office , somenoe like wendy dolman or her quality is paramount. two accountants two bookeepers and two office admins. . alan and zoe will handle trusts and grats. heatehr diana george will be incolved in art partnership. if you want brad, analysts etc. and kids to do investments I have little to add in that regard ,except to be able to account for things properly. I suggest that the kids must have skin in any deal.
Alternatively , we can continue to focus on fun and let someone else do the things that you want done. and you and I can kibbitz about it all. structures outcomes risk, museums. charity, (joslins answer by the way was I had asked how much charity was leon planining to give this year , (the 2 m) he didnt include your foundation or the payment to me, or from debra and you??!!

Date: Mon, Nov 30, 2015 at 11:21 AM
Subject: agenda
To: Melanie Spinella <[redacted]>
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Fri, Feb 20, 2015 at 5:52 AM
Subject:
To: Melanie Spinella <[redacted]>

1) pg 1 A " unequal shares" . pg 23 "removal of trustees " absolute. dont be confused with abiltiy to set

up seperate trusts, , 2) I am reachable this afternoon in europe. on cell. 3. on another note . -our financial agreement ended months ago . seperate from the art partnership (which i was told yesterday to my amazement is still not funded) . i am obligated to complete ? the time i have dedicated since oct/ dec has been spent mainly as your friend. tom, brad though i am fully cognizant of my responsiblities. I will try to help find people. I am not good at human resources. howevr If I don;t think they are good enough for you. I will continue to say so , and you obviously decide. but I will reiterrate even in the face of your "nobody is good enough argument." keeping foremost in my mind that you and I have only beeen shown a very tiny handful of people. 4. I find the friction over fees , counterproductive. in an attempt to avoid it I had suggested a multi year deal early on. you rejected it. I then suggested, and urged you to have an option at a fixed fee , you also rejected that .you wanted the fee payment only at the end I argued but ,conceded. I suggested a structure that tom didn't like. you rejected it . 5 I suggest you make a fair proposal.- that i can either accept or reject. some payment up front this time is a requirement. I am willing to modify any outstanding obligations. - there are creative ways to assure you of your desired characterization of those payments. 6 you should open accts at Deutsh . and goldman. I am told that eilleen has set up over one hundred bank acccts for you???!!. few relevant 7 you should immediatly demand a list of all her acct authorites , exec poistions . director etc. bank authorizsations. etc. talk later or over the weekend if you like

Date: Tue, Jan 5, 2016 at 9:32 PM
Subject:
To: Jeffrey Epstein <jeevacation@gmail.com>
Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of detailed time. I do not know how, and if ,to move forward - our last transaction. a transaction which you saved 600 million in tax. even if 20 years away , (i hope longer) even discounted is a 300 million savings . for that you ignored our agreements , verbal written and emailed -and decided that it was only worth 8 million dollars. (assuming phaidon srichard happens. 24 m savings not including artspace and debt benefits certain to come later) FYI the phaidon transaction cannot happen as currently comtemplated IT will not work . NOT

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I preferred to have no financial interactions. I dont have many friends and didnt want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind but goofy Eileen Alexandersson as the sole manager of your accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions on the returns. ,(april) Oversight on new grats- first at 22 and then at 19 that were done without my consultation and needed to be resolved soley as a result of my last minute intervention. . 600 million in after tax savings was just accomplished. though you left the 30 million outstanding that I had said should only be done" if" that was my additional fee. not used for non biz purposes and not art.

in June and then again Sept, we both agreed to a 50% of phaidon payout first projected at 20 . but less when artspace and debt taken out, - then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the art space investment will also lead to a write- off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay.

I include below the email i sent to you on April 15, the day i was examining your returns It laid out my understanding of the compensation agreed for a transaction of the magnitude to the penny of the one just completed.ie 600m When it appeared that the transcation would and could go foward I was the first to point out that our agreement would cost you too much money, therefore

From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.

Date: Sun, Mar 20, 2016 at 11:17 PM
Subject:
To: Melanie Spinella <[redacted]>
glad to see you are personally on the mend - as well as the fence. -- As you know i dread money discussions with you-- however -we should address the issue of what you would like to do moving forward. re- do family office, accounting trusts , estate and apollo agreements . Along with your " payment " last year we agreed . no further obligations on each side. yes, i continued to moan. I realize that though I ve done quite a lot this year already , it is not your responsibility. . As you often like to

remind me- you've paid a great deal of money to date. that being said - If you want my involvement moving foward, I suggest you pay my regular l fee of 40 m . 20 now . 20 on completion or as per the invoice issues at the end of last year pay 30 all at once. -
To help out . im keenly aware of your current cash position. so I will consider an in-kind payment - real estate (Miami), ,art , financing of my new plane (allows you to spread over years or of course the preferred cash. Get rid of Castrucci,it is over a year since the same story of findign the right guy at the top. you entire accounting needs to be re done. , office downsized, reporting re done. meetings to recitify, categlorize , the various docs re appollo , rowen , suydam, alan etc. Brad can direct investment guys, (hopefully) my people will be in your office for a few months . reorganizing IF you decide not to pay I fully understand, as I m sure you will re my no longer spending any serious time on these things. Of course re any non financial issues , I am always there for you and will continue to be the best friend I can be .
Steve jobs said that everyday he woke up , and asked himself , if he knew he was going to die tomorow , would he do the same thing that he had planned for the day- he wanted to check that he was doing things that he really wanted to. after three days of getting back an answer of no, he would change what he was going to do. . he also did not believe in LONG term plans. I dont think either one of us will figure out what we want to do long term so my thinking is that we should try to have fun everyday, and welcome serendipity.
I think another trust and estate lawyer should be brought in to deal with the issues of how not to allow your family to get screwed by your partners on death . Alan, for years told me that paul weiss had drawn the docs so no issue but when recently pushed by my new fire drill he asked akin to draft .?! PLease ask brad about why he keeps talking about flow . I dont know what he means, its so silly . . this is only about money control and protection .
I am leaving monday night now. free to speak in the afternoon

Date: Tue, Apr 12, 2016 at 11:49 AM
Subject:
To: Melanie Spinella <[redacted]>
use tax questions. ? california question state returns? as you know wendy did not play a role here. . her involvment moving foward would help alot. . sign your gift tax return today if possible . I will be finished tomorw with this year. crazy on april 13th. !! . last minute to say the least. . brad told you the tra can be separated with approvals. which should be simple. . alan alwys just says no , . unless he is asked , well what if we amend what is there. . moving foward , i ask you to decide if you want me and my team involved or not. . I want to be weaned. I agree the past , apart from phaidon and artspace. this year of course is done. . for me to allow bad reporting to negaitvely impact you, by keeping joslin, would be irresponsible on my part. . letting him do harm, or stopping him and having to listen to his leaving is my fault. is awkward. . I will call at 3

Date: Tue, Feb 9, 2016 at 7:56 PM
Subject: Fwd:
To: Melanie Spinella <[redacted]m>

this was sent four months ago, nothing has changed
sent oct 15. before big transaction.
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to

pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry? '

There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax,

He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .

. Asking me who to hire , estate attny tax people etc. :

I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I

am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,
a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note
; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that
I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge
If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

her the last two places. ?

To: Melanie Spinella <[redacted]
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." .

I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

---------- Forwarded message ---------
From: **Halperin, Alan S** [redacted]>
Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan

Date: Tue, Feb 24, 2015 at 8:20 AM

Subject:
To: Melanie Spinella <[redacted]>

Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.
In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.
I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50

40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)
With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-).

however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .

We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella <[redacted]>
Leon,

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In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments,

in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.

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In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .

We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Mon, Apr 21, 2014 at 11:39 AM
Subject: trying to bridge the gap.

To: Melanie Spinella <[redacted]>
you were at 30 30/ me at 60 40. . / proposal 50 /25 and in additon I would be allowed to recommend 15 from directly from your own foundation. All payments to be made in addtion to currently owed. so $40 on april 25 , $30 june 15 ,and the alreadly owed $10 as planned on oct 15. I would direct the 15 charity in the next 12 months, and the last 25 to be paid on conclusion.
leon
10 am - Arrival at White Plains / Westchester Airport
FBO and US customs is "Jet Systems Aviation"
Adress: 85 Tower Road Hanger E, White Plains, NY, 10604
Telephone [redacted]

Date: Wed, Mar 25, 2015 at 11:52 PM
Subject: previously sent
To: Melanie Spinella <[redacted]>
I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine . We are scheduled to meet fri at 430 , I leave at 5 am sat morning.So there are no surprises 50m for the year. . or 30m for until 7/ 15. you can roll the balance for last year as a concession. half up front. no more all at the end. ive spoken to brad every day. more questions than answers. joslyn cannot be left unsupervised. his answers are knee jerk . eillenn told me this , that the other

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Date: Thu, Mar 26, 2015 at 12:07 AM
Subject:
To: Melanie Spinella <[redacted]>

you need to build an entire office from scratch. no question that was never my obigation, - systems , personel. finance tax, bookeeping, ,office. complinace. investment. monitoring, banking loans coming due , review. gs jpm gs, . . plane boat houses construction , new will, . phaidon sale. you are no further

ahead today than my nov memo layed out = no real candidates. etc .. Ill redo the art partnership under new restrictions of course at no charge, and review the work done by tom/ joslin.
joslin you and I should sit. you won't like it. AT ALL> he is afraid of telling you the story, as he belives brad is your guy and does not want to get fired. ada still refusing to share income tax opinions based on privilege , not under control at all. ? ? joslin said that murphy is not the cfo, as you told me but the coo. and the cfo is the same guy that reported to andrew, mistakes after mistakes not picked up by murphy who joslin described as a kind buffoon . he suggested a new ceo or coo who can make decisions. someone with some financail experience. he asked for a chief decision maker. 50 for year roll in money owed . 30 till july , most up front needed

Date: Tue, Mar 31, 2015 at 3:25 PM
Subject:
To: Melanie Spinella <[redacted]>

Nov of 13 : I told you tom Eileen and Ralph were not up to the job, you disagreed very vocally and strongly , " Ralph wrote the book, Tom has been doing it for 15 years and Eileen ran the trading desk at Morgan Stanley. " Ada who had been working on all your documents for years while at the bank had been brought in- house but created more issues that didn't exist. and phaidon was its own animal
.
Dec 13. you were again annoyed that i said that they needed to be replaced and said "i was talking out of both sides of my mouth." first time (email available)

Jan 14, you decided that no third year was necessary for my help. and i told you i thought that unwise and even suggested giving you an option at 40 m so there would be no tension

Mar 14, I told you that to do the job right , my team would need to do it. not yours it would not be inexpensive, but it would get done properly, you chose not to do itand said lets wait and see

April 14. We agreed to clean up various past mess.with the end of my work OCT 15th only then would i get paid.. urged JPM (first of 14 reminders)
GS and db accounts to be set up in order to bring your financial structure into the 21 century

July 26 , I came to bens party, said new people needed to be hired, keep Eileen till end of year, and Ada till march, you suggested getting ada out earlier

oct structured the art partnership , but you wanted to wait until you fully understood ramifications formed the doc in dec to have it in 14,

nov/ dec 14 I told you I considered my work complete separate from art partnership. gave list of things to do.
three months of you and your high school friend , trying to build a house with little of the relenavt experience. its silly . still no accurate numbers accounting , charts, etc
jan 15, I told you joslin cannot hire people, has not so for more than 5 years, former job in a public accounting firm.
april 15 . no senior accountant even in the wings. joslin talking about reaching out to hire the only person he knew(worked in the past with dagazsitno) and i interviewed 15 months ago. and rejected.

low level . He does not want to hire himself out of a job, spoke to brad last night he wants a coo so that he does not feel demoted

your choice!, (brad maybe does have insight - to your credit, might have been right when he said- jeffrey you should realize this is only about leon not wanting to pay more money , (i ignored his summary , along with his comments on the risk of fracturing
summary
I can either do it for you or not. if i do it it means finding hiring organizeing, structuring reviewing re negotiating, bring in my team under my control not brads. . stop -gap accounting - my people getting the books software and procedure in shape. setting up the various brokerage and bank accounts and rationalizing them, organizing Melanie, TPS , house, and all the intra family notes outstanding, overseeing the phaidon mess.maybe sale re do some of estate given the new circumstances. etc. I 've responded to every brad question , given him first lessons , not a good use of my time or his. he should administrate, follow up, have signing authority instead of eileen, (AFTER rationalized accounts). holding a position of trust. ONLY

talk whenever you like, NO STRESS , Mort had a skiing accident and sultan not fully comp es mentes. no stress please for either of us . both of our reserves which are not insubstantial , can use a break

Date: Tue, Apr 7, 2015 at 4:29 PM
Subject:
To: Melanie Spinella <[redacted]>
agenda for tomorrow.
1 building an office from scratch. who does it. ? so far little or no progress in real terms. . brad should remain and can administrate. follow up methodically, . has no idea of corrrect questions to ask. or understanding of family office issues. procedures checlks and balances. etc .. consultants , diana goldner foundtaion woman?. office . focus .
2. without strong , very stroung direction, joslin will not make it. does not know where to focus. who to respond to. and how. unfortunately now getting more and more answers like the powers that be , want it that way.??
3. the priority list is still virtually the same , since dec. . accounting system. redone from scratch. etc.
4 . it will take 9 months. at a minimum now. . an outsider brought in when everything is clean , including phaidon, notes. eileen. banks, jpm db, bam, etc.
5 disposition, of Phaidon. art space regan etc.(ressler??) . sale of boat. plane . art , stock, investments, athene? etc, tra, brh.
6 . new IT . complex. household . payroll insurance . recurring bills.
7 estate modification given new circunstances and altered probablities. (use etc)
8 charity, new trusts,!!d IPI< harvard . fees,
I spoke to brad and made him aware of all my concerns and propsals to move forward. he is desperate for help

Date: Tue, Apr 14, 2015 at 11:53 PM
Subject:
To: Melanie Spinella <[redacted]>
saved you 500k at the last minute, . brad has had the same chart since march 16th, its his job to review NOT MINE .appears he is one of those living in the dark leiwe. I found 8 million dollars today, missed deductions. . not yet in the numbers, .?

Date: Tue, Apr 21, 2015 at 1:10 PM
Subject:
To: Melanie Spinella <[redacted]>
emblematic of my frustration and ,in the end what I believe is a waste of our time energy money and resources. is the very simple question of bidco bank accounts. 4 months ago I asked the question , does it have a bank account and if so , who has authority, where is it located and what transacations ran through it. it is only one question out of hundreds that need to be answered. hundreds. . you asked that i not behave like Zeus and try to explain why I want need certain things. since i said to placate Brad's inquisitive ness and his desire to learn I said a filing might be required. instead of merely getting me the answer. he has talked to joslin paul weiss , you , you wanted to ask brad karp. (maybe a filing that reopened things,)
none of this as a practical matter has any influence upon the ultimate action taken . I merely needed to know a simple answer. and today after asking at least every week since then do not have an answer . I have been trying not to add stress to your day. i try to explain things and take the time to do so gently, (not my forte . this is one question out of hundreds. the fact that a 21 year old was in the office only xeroxing for a month, was obvious to everyone in the office. having a 26 year old xeroxing instead doesnt move us forward, answers first. copying old files. can wait.

Date: Wed, Apr 22, 2015 at 1:56 PM
Subject: another flowery email.
To: Melanie Spinella <[redacted]>
I am sorry. I realize you are under tremendous stress, In Bedford you asked me for my help I could not have been more clear that thought it very unwise as in my words I did not want any financial arrangment between us, it risked conflict and tension what neither of us needed more of. and did not want to risk torturing our friendship into the likes of the kind you have with Mark nor Josh, : now,- I dont have anyone but you yelling at me , in my own house. no one. it is highly unpleasant but I am trying my best to be understanding . sorry . From the outset and as you told me you recall. i tsuggested that three years should be the period of engagment. as planning is not a one year excericse . you declined to commit to a number of alternatives presented to you for payment of the third year. I told you in nov that you should decide whether to now sign on for that very third year as the vast majority of my work ended on oct 15. you recently told me you thought i was kidding. .you hired brad patting him on the back that after months of inquiry he can now, finallly tell you which llc owns the cars??
once he has all the facts what next ??. whether or not you refer to a portion of the third year as after care, or whatever term besides 'scoundrel you choose to use, I m not sure why you assume now it should be free.(I HATE THIS CONVERSATION < HATE ,) and i heard you when you said you told me what was l work still to be done you thought valuable enough to pay for. please tell me . and then we can decide the next steps ,,, if any. I consider my work rarefied art. I guess the value is in the eye of the beholder . IT reminds me of those people looking at a modern art piece and saying " my child could do that " . hope you are feeling better.

Date: Fri, May 1, 2015 at 12:50 AM
Subject:
To: Melanie Spinella <[redacted]>
ada and brad are respondbile for the loan ,. docs, at a minimum , leon he hasn't read the financial statements SINCE DEC. !!. impossible ,had he done so the silly numbers jump off the page . (sent in another email). it is a financial office., 190 million sitting unused in CASH , budget and planning person

for what , its not a publice co. ? townhouse construciton , household operations, boat, plane, taxes, we went through this with the cash flow. you and i know approx how much each will cost. its a week job not a fulll time one- ada has no lien copies. none. ?! impossible not to know , ask, quesiton? two senior accountants CPA s. not the 75k girl that they hired, . IT professional backed by a firm. high quality,can we tap apollo resources? new lawyer , heather level . new receptionist, and bookeeper. get rid of ava. next could be new office ,new furniture , , the whole place reeks of cheap. IT IS MAY< I have not been asked to interview one person to date. not one. having cpas in there tomrrow woudl go a long way. i dont understand the time line, coo first. ? in by july?? cpas in by sept . tax return due oct 15. ?

Date: Fri, May 1, 2015 at 2:36 PM
Subject:
To: Melanie Spinella <[redacted]>
I know that both you and I heard brads'. im out of here if i dont get a coo. . sorry,. i know that neither of us have stood in the way of his finding/ gettting one.. JPM account DB account GS account, ??? its MAY 1. nothing in the first quarter and these are only papers that need signing.
I suggest your thinking on my role and compensation for my work might benefit , from a mental shift - think mark and josh, without the mutual resentment (HAHA) only in terms of sharing ,thanks, I am and have been your financial partner i.. rectifying circumstances that appear in hind sight unexplainable. I wish you woudl have asked me earllier to review your things , but i understand. I do know that soley as a result of my actions your personal bottom line has increased dramatically, if you had thought of me as your partner in this endeavor , instead of an employee, i think your reaction to sharing t benefits would be different.
If you recall, you wanted me to be paid , unlike others at the END of my work. we discussed this ad nauseum, and agreed OCT 15, last year was the end . You had wanted more comfort initially on the art partnership so that date was delayed. It has now been six monhts since then, your concept of aftercare . . for free. was already unique , in your words this has to have an end.(weaned) if the actions of josh and mark led to one hundred million dollars , what would be their share. Im not sure why it is different in your mind. but i respect the fact that it is, Is it because their work seems harder. it cannot be simply because they devote more time to you .or it appears to involve more effort. I am happy to continue to play a partnership role. as I have been in many areas of your life. . I am also happy to move on and have no more of these emails. I find them as tedious as you do . if you prefer a partnership structure , ok with me, I tried to minimize the amount of money i would recieve by making it a flat fee . as i wanted you to feel good and have no second thoguths somehow if the payment comes from a partnership structure you seem relaxed as opposed to writing a check, I focus on trust and friendship first, and the fact that you don't include josh and mark in that category, gives me great pause . I proposed 33 percent of money made for you. . in the past you agreed that amount. it will be huge, but ok with me, I can talk today at 945 as you suggested. or if you woudl rather over the weekend ok

Date: Fri, May 1, 2015 at 7:08 PM
Subject: Fwd: Picasso agreement - question
To: Melanie Spinella <[redacted]>
silly

Date: Fri, May 1, 2015 at 12:27 PM
Subject: Picasso agreement - question
To: Brad Wechsler <[redacted]>, "Jeffrey Epstein (jeevacation@gmail.com)" <jeevacation@gmail.com>

Brad and Jeffrey,

Gagosian has one final change to the Picasso agreement. As you know, we have structured this agreement with the Buyer as either Narrows Holdings LLC or AP Narrows LP, and given both of those entities the right to assign the agreement to any one among Leon, Debra, the kids, or family trusts including APO1 and APO2.

Gagosian wants us to agree that, if Narrows/AP Narrows assigns the agreement to someone else, Narrows/AP Narrows "shall not be discharged from its liabilities under this Agreement and shall remain primarily liable to Seller." Larry is concerned that we might assign to the Black kids or to a trust that has no assets, and then when he has to sue us because we don't make the final payment of the purchase price but have possession of the art, the entity/person to which we have assigned the agreement has no money.

I think this is a valid concern and that we should agree to it.

However, Ada just reminded me that it is possible that Narrows/AP Narrows (really, Leon's) agreeing to effectively guarantee payment by the assignee might be considered a gift to the assignee. In the discussions with Alan about rearranging the bank loan once AP Narrows is operational, Alan agreed that there could be deemed to be a potential gift from Leon to APO1/APO2 if Leon provides a guarantee to the bank that is for the benefit of the trusts as partners in AP Narrows. Alan suggested mitigating this risk by having the trusts sign side agreements with Leon which say that if AP Narrows defaults on the loan and the bank goes after Leon on his guarantee, the trusts will make him whole.

This issue only arises if we assign the agreement. The risk is also limited in time because it would run from the moment we assigned the agreement until the final payment is made, which even if we assigned immediately after signing, would only be 11 1/2 months.

Shall I agree to Gagosian's request that Narrows/AP Narrows remain liable even if they assign the agreement?

I'm in the office if you would like to discuss this, but I would love to get back to Gagosian ASAP so we can have this agreement signed today.

Thanks,

Heather

Date: Mon, May 11, 2015 at 3:08 PM
Subject:
To: Brad Wechsler <[redacted]>, Melanie Spinella <[redacted]>, Ada Clapp <[redacted]>, Richard Joslin [redacted]>

lets look at funding the art partnership begin with 100 m of unencumbered art. plus 20 inveestment. and the same amoiunt of value from trust. leon should choose b trustee and begin to use mechanics. . later we can amend and add .

2 hire an IT person asap
3.I would hire jerry the woman. gittis. person
4 .I will find a subpart k person to handle partnership acct
5 , accounting software upgrade, onlilne banking needs to be seamless
6. not sure status of bringing plane boat acct inhouse?
7 prepare fbar report for june. draft next week
8 pahidon actuals vs projections. . new valuation
9 . new valuation of tra contract?
jpm db goldman sachs acct? new llc?
review of dec 31 books for all entities? bfp . etc

Date: Wed, May 13, 2015 at 3:04 PM
Subject: Fwd: jobs ahead
To: Melanie Spinella <[redacted]>
the list that we discussed.. i spent time with brad again. re the candidates . fiiling due, this week, next month, .

Date: Sun, Dec 28, 2014 at 5:18 AM
Subject: jobs ahead
To: Brad Wechsler <[redacted]>, Melanie Spinella <[redacted]>, Ada Clapp <[redacted]>

1. review accounting system. Book keeping softaware. staff, (senior accountant) methods on line banking, brokerage. cash mgmt. airplane reimbursement. boat sale. art purchases sales use and sales tax. tax filings FBAR FATCA, gaming commsion, pfics, insurance . uk co law.
2. review docs for TRA BRH grats, trusts, heritage will, insurance, art lending. medical, springing powers. two fire drill books. one needed for injury. other for death
3 review bills . boats , planes, legal, (PW, McFarlands all outside. legal and accounting. Toms bills over 400k . house projects. south ny ben
4 cashflow projections tax projections , interaction with Apollo accounting tax, Phaidon ,art space ,and Regan. legal accounting. audit
5. children meetings , review to date and allocations
6 review all role in payables. files scanned, no paper
7 review invesmtents for tax basis and unrecognized gain
8 schedule of all hedge funds . redeemables commitments etc.
9 charities pledges strucutre, staff ,

Date: Mon, May 18, 2015 at 2:17 PM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella <[redacted]>
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?)):: . in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to eat the apple from the knowledge tree)
. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain)

books as they were mystersiously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.

still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with : As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Fri, May 29, 2015 at 2:53 AM
Subject: ulysses 2.0
To: Melanie Spinella <[redacted]>
I realize it is only due to a lack of understanind of the job ahead. and not out of any sense of unwillingess to pay
- as opposed to merely hiring people to set up a family office, someone will have to do the following- separate from the art partnership which is my responsiblity . there still needs to be a huge amount of work done for 2015,16. not to mention that brad at the moment is going to have train the incoming team?? your call
strategic decisions re estate and other planning , sale of phaidon etc. . in addition setting up for the accounting for each strategy ie.:

income, estate, gift ,sales and use, transfer excise picasso, 1031 calder. . review and detailed oversite of IRS SEC GAMING NYS. real estate, entity valuations (many) tax filings- disclosures, follow up of grats, trusts ,defective trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank account need to be rationalized, not only having brad step in to children investments . gift taxes, trust , loans, notes. payables. expenses allocations . . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments funds and charities , dividend treatment -important review of transcations relating to BRH (amendments) TRA sale (nuanced) , shareholder agreements, bank loan agreements new bank relationships. . wills, construction accounting and oversite , contracts planning permits etc..employee rules, regs, . checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, . stock options,(ie environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) review of boat expenses plane expenses, depreciation issues refunds etc. . rationalize all outside counsels and accounting firms
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, , Apollo in house counsel.
set up and oversee brokerage accounts at JPM DB GS and thoughfullly trade
. new IT system from top to bottom full time IT person
new accounting system - on- line banking cooridnated with reports . fire drills as per caruci (he sounds good) and . audit system,s . review of john murphy? joslin? dag? eva? .
in house, review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy re:
As new facts on the ground develop , phaidon debra, children meeetings, involvment , trustees adjusted, stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe?. real estate?, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc
you are sitting on over 100 m of cash???!!

Subject: Re: we're calling the sales tax guy at 6:30 pm - I'll come to your office
To: Richard Joslin <[redacted]>, Brad Wechsler <[redacted]>, Heather Gray <[redacted]>
sorry but this is emblematic of the silliness that appears to continue. ..... 1. How can we ask for a legal opinion when it is crystal clear that we don't yet have accurate facts or numbers , f. 2 Invoices have not been reviewed! corporate structure is convoluted and unexplored in detail. (was the boat captain on the call?) 3 Paul weiss is the attny , and should be charged with getting us info. . 4. Bringing in yet another outside lawyer without full vetting and consideration, a waste of time energy and money. . 5. ex. what is the location of charters shown on the invoice? do you know. . ? if th invoices are incorrect, does that give us any comfort in trying to defend an audit. . I saw three invoices only, and each had a different owner or address . .

Date: Mon, May 18, 2015 at 8:17 AM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella <[redacted]>
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?)):: . in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to eat the apple from the knowledge tree)

. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain)
books as they were mystersiously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.
still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with :
As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Tue, Jun 30, 2015 at 12:23 PM
Subject:
To: Melanie Spinella [redacted]
1.I believe I have heard you , but i wanted to make certain that I have understood
Though after much discussion ,- much! you were adamant that i receive my fee only at the very END of my work, oct 15 , this was a long discussion but you felt very strongly at the time . you now feel that as it was a very large sum of money . some of my time this year should be spent on your recent concept of "after care ". - and that after care should be for free . I have continued to pay others as well.
I have asked and you have previously said you would lay out for me what you thought was encompassed by the concept. that was end of january Training brad?? who was your choice . not mine ,by a long shot. only brought on in january? ? hundreds of hours spent . eileen debrief? 2. boat. plane household

ex[penses. personal review? , trying to create accurate ledgers of capital expenses . so to minimize future gain.? 3. phaidon - review from head to toe? though we agreed many times in the past this was not my responsbility, 4. overseeing the opening of trading accts. proposed and sent over first docs in april of 14. .5. art partnership.? we agreed though the draft was sent in sept14 . and still not done though little different from first draft. . 6 picasso contract? 7 art sale 1031 8 airplane review? 9. IT system implementation. ? tra brh sec gaming comm, foerign filing , tax, disclosure. fondation returns. ? planning for 16? not sure . 10. insurane review with josh? stock sale prep. ? filing ?
I am available by phone. you mentioned my travel schedule ----last yea,r I canceled three European trips and two to seatle , none to my benefit.
I have been consistant , I dont have any new proposal , do you ? though i am" complicated" , I have no intention of trying to convince you of value, its silly ,
OOOOOOOOOOOOOOOOOO i think if I have correctly deciphered your sophisticated code - should represent -drool

Date: Tue, Mar 3, 2015 at 5:18 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
lets set a time to speak today if possible . 30 minutes or so. my schedule is tight

From: **jeffrey E.** <jeevacation@gmail.com>
Date: Mon, Sep 21, 2015 at 6:36 PM
Subject: agenda for today 5 pm?
To: Melanie Spinella <[redacted]>, Brad S Karp <[redacted]>
1. put someone on asap to ascertain if she is still in london. 2. set up conference will uk criminal and uk counsel. a give them more facts. 3. choose method of message delivery. my choice. - two highly respected former ---- fill in the blank, immigration, scotland yard. sfo. . who may knock on her door and present the terms. 4 if not. an alternative method. 5. Is it possible to find out if she has gone to authorities? tabloid lawyer. 6. have the same types of individuals availble in new york if she decides to return as stated. . i prefer former fbi, or immigration one man one woman. . 7 from opening a DA investigation to arrest. how long? 8 , can we open a file in either jurisdiction, and maintain confidentiality.

Date: Mon, Sep 21, 2015 at 6:48 PM
Subject: Re: agenda for today 5 pm?
To: Melanie Spinella <[redacted]>
Cc: Brad S Karp <[redacted]>
I think that Melanie should set up a separate email account for this correspondence. she currently is on an apollo server.
There is not even a good solution . all have substantial risks. we are dealing with a wholly unpredictable and bad minded person. I and Brad can only make suggestions/actions each less than stellar. - that being said we should do our best to have all the facts . options etc. and to distinguish fact from opionion As the consequences of any decision is likely to have some very bad parts , Leon needs to be cognizant of as much as the downside as we can adequately foresee.

Date: Wed, Sep 23, 2015 at 12:07 AM
Subject: Fwd:
To: Melanie Spinella <[redacted]>
jan 2 of this year
Date: Fri, Jan 2, 2015 at 2:55 PM

Subject:
To: Melanie Spinella <[redacted]>
Leon, I decided last week that there was little or no upside in disturbing your well earned holiday especiaily as you seemed so peaceful happy and smiley ,getting yourself in shape and truly enjoying your family time. etc. however the situation in your family office is unresolved. I am aware that brad starts monday howver, two last days of the year madness. timber.deal not complete no jpm,acct activity no partnership docs , old stock sales not complete , no bank doc redo. no phaidon note restructure, ., no boat expense review. airplane same ,topco midco.etc still not finished (trustee) , projections mixed with fiction. , legal exp out of control. no care for admin, silly (audit). tom conversation with joslin. notes. debra, trustee notes. trustees hiring . bens audit. interest payable made hoopjumping last day of year. after weeks and months. of lectures , gifts to discuss- staff. -houseproject mgmt. . I will continue to try , I had offered ajoint call with eileen before you left. as i said before , joslin takes instructions from eileen. he said it was made clear to him that he doesn't work for me but works for you. . I tried.

Date: Tue, Sep 29, 2015 at 8:39 PM
Subject:
To: Melanie Spinella <[redacted]>
jeffrey
Brad Wechsler is asking if you could meet for a half hour with him and Rich Joslin to discuss Use Tax Refund. Below are available dates/times...below that is your schedule. OK for me to schedule in?:
NO sorry not until i hear from leon
leon. to be fair, I had sent the first note to you one year ago . stating that my work would come to an end on oct 15. that day had meaning as everything would be closed. you asked that i continue to help brad. as of nov though he would officially start in jan. I said ok, but ..... " you told me to continue as we would work something out" I told you my fee then was 40 . feb you came with ben while kathy ruemmler was here. and said next week, debra got bad news. and I quickly prioritzed not adding stress to your situation. I wont regurgitate the interim, though millions of dollars were saved since. millions. . it is now one year later and you propose 10 mlllion , plus a contingent fee . I have said that i would work with you , and if contingent and a percentage of something. I strongly believe that is not in your interest. I continue to put our friendship first and dont want you to write a check for over 100million andthe i will have to listen to lewie for the next few years. but if you prefer over my objection a percentage deal then it should be of all savings not just phaidon. (a random concept) . The idea that i am somehow even marginally responsible for neither you nor heather , ever telling me that there was an unresolved issue, though you said you had been pinged a number of times is emblematic .
I can do a call with you and Karp. anytime you like today, but i can assure you 100 percent that there is no light between our positions. ZERO. and he is ready to do his best to try to explain it to you.

Date: Thu, Oct 1, 2015 at 11:03 PM
Subject: Fwd:
To: Melanie Spinella <[redacted]
to refresh your recollection, as 4 states. 40 a year for three years. as i said today. . the other was in addtion as you recall.
Date: Thu, Apr 11, 2013 at 4:02 PM
Subject:
To: Melanie Spinella <[redacted]>
1. 80 percent of contracted job is accomplished, now drafting ,signing and few critical decisions on your part still await , will fill in nec blanks, 1, how much of upside to kids. , 2, protections . 3 allocations. 4. charitiable, inventory, securities,

2 .to engage the second phase if you so choose , and considering there is only 8 more to be paid this year in oct , for the job now almost completed, total of 23. that was agreed only for history fix.
3. with the necessary proprietary protections , proposal is for first year only an additional 17 . making it 40 , but full year balance on signing , ie 25. takes care of 2013
4 , moving forward , 40 per year ,(approx 1 percent) for three years, to be credited against an agreed formula. Im open to suggestions total approx 120 for new workover 3 years , benefits to you over the next 20.
5 , can consider interests other than cash as payment. ?
6. need to speak re , bankers, valuations, mechanics and their continued importance.

Date: Fri, Oct 16, 2015 at 4:38 AM
Subject:
To: Melanie Spinella <[redacted]>
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
today is Oct 15
With your full knowledge I paid out 8 mil to my staff before june, . so i guess I can safely assume that after consideration of all the things I did for the entire past year separate and apart from your unique free "after care" concept. , what you thought was ultimately fair was the contribution of 5 million to a foundation and a total of 2 million dollars to me.

Date: Fri, Oct 16, 2015 at 1:08 PM
Subject:
To: Melanie Spinella <[redacted]>
I think you should consider the fact that your family office will be the most central component of what you leave to your children , wife heirs. it is the core of your assets. your art might be sold. your houses may lie empty, the apollo stock could be sold. you will pass on your office , . it will be the primary player in your estate tax. probate, transition. Brad has taken it from a D minus to a C minus, If I were you I would set the goal of an A. just like your paintings. . Like a house you could attempt to renovate it. it will take more time and money . or . in essence as I suggested in dec of 13, start from scratch. A financail head of office. - brad could move to being richards replacment as trustee. . barry cohen would be perfect but carries the trustee taint now. . take a tax partner from a major firm. to replace joslin, cost 1 + mil . keep heather and ssmantha. . bring in full time IT person. ASAP . your lighting contractor in your new townhouse has better IT than your multi billlion dollar antique opersation. data breaches are not your concern. precision is. . either re do the office layout . or get enterly new space. the proposals to focus on following on a monthly basis the values of all your current investments is an example of misplaced prioirties. . Your office is the heart of the familys financial life and temp future, it needs a heart operation

Date: Mon, Oct 19, 2015 at 5:10 PM

Subject:
To: Melanie Spinella <[redacted]>
Radical but my preferred idea. . START from total scratch. there is absolutely nothing worth keeping in your family office except for heather , nothing at all . I remember when i bought my first house in order to renovate and jack robertson said forget it. knock it down start again, I could n't believe it. but he was right. Like your tax returns that were done in triplicate. TOM RICH ALAN. . tom and rich were not really useful in the end. Alan was the only smart one. you should in my opinion Start a brand new office. hire cfo. bring joe over. heather and samantha, run parallel for 6 months and close down the mess of elysium forever. leave your kids a functioning operation professionally constructed and managed. NOT BY ME!!!
LAst nov i laid out priorities IT , being the first nothing as of today. in July I said focus on airplane as a test . to examine procedure and proficiency, so far mostly a waste of resources time people etc. Only last week told debra owns 49 percent of plane. no IT to speak of. bens house unaccounted for. tax returns very very sloppy, . boat still argued as third home. . pilots bonuses? , structure unkown by all. cash sitlling at the same time loans outstanding.
Phaidon , looks like close to breakeven in a few years. others totally unknown. Query , do you really want this ? : I m not sure how you both want to have an investment office and have cash flow being eaten by publishing and loans amounts outstanding increased by art. --interest rates will be going up.- . your plane will cost 10 million to refinance - so will boat if sold next year-. art space and regan , both needs more cash. with little return, taxes , art purchases . Part of radical solutition is to sell publishing.altogether. (are the children really interested.) . restrucuture plane from scratch. layers unncessary. simplify crazy structure s bank accounts trading accounts accounts payble. credit cards. etc. The best way to wean yourself away from me is to have someone else do the whole thing from scratch. . move brad to be the replacement for Richard. . he is nice but this is not what he does. Him saying it is soooo fucked up to me , was only an echo of me sayint it to you. .

Subject:
To: Melanie Spinella <[redacted]
as brad can attest , I spent time today with joslin, joe. etc. no question at all, a failed experiment. In the words of a banker that made a call on your office. what happened? leon seems to have replaced Eillenn with a team of Shleppers. ? I know you care little for what they may think , but the legacy you leave your kids is just that. you only have 60 days of planning left for this year. numbers are all over the place.
I recieved a nice call from Karp today, . He touted me as a great friend to you. I am happy to be just that. . He said it was important for me to tell you what others won't. Keep heather , fire EVERYONE else.

Date: Mon, Oct 26, 2015 at 1:10 PM
Subject: CONSTRUCTIVE?
To: Brad Wechsler [redacted]>, Melanie Spinella <[redacted]
1 cash flow projections for 16. . draft ok. i will be easy. i need rought projection. 2. phaidon chart laid out now with who signs in sale of shares vs enitities. ? ie managing memebrs. . 2 . 3 new trusts. Apo-o , dynasty, (does leon want to put in new restrictions per child). - publishing interests. . 3 llc, for investments 4 names insured? guarnatees? art loans. outstanding. sales or use tax owed? 4, comparison of execu jet vs jet aviation. . 5. the bank loan on the jet is going to come due. does leon prefer to extend f they would (he is a guarantor. ?) or will he need to pay 10 million cash to renew, that wiill determine new structure of plane. getting rid of rance, wells fargo, john hannon, lisa gratizaino etc. . 5. boat restructure . 6 grats - if leon decie to have another. 7 accountning for children, .

Date: Mon, Oct 26, 2015 at 7:08 PM
Subject: draft
To: Melanie Spinella <[redacted]>, Brad Wechsler <[redacted]>
phaidon and art space. combined basis 96 million , (reviewed with brad and joe.) . add ten for restructuring . basis 106. mi. subtract total sale price. for both, lets say approx $8 - 15m . leaving loss of between 90 and 98 million long term loss. . AMT rate 28 % obama . tax 3.8% . city and state 12% total aprox 43 %. tax rate. savings 38.7 - 44 m

0:51 PM (15 hours ago)
to me, Richard, Karen
Good afternoon
Removal of headers in Cabana's 1 and 2 started today
Dock Shelters proposed start date 16 Apr
LSJ staff cottage and Sams kitchen and bath cabinets are due in this week.
Have yet to schedule install.
Will have estimate for GSJ Staff Cottage from EB by the end of the week
Unable to contact Jimmy again regarding thIs project, Reached our Monday to schedule site meeting, got a - No Can Do -
reply !!!
Regards Brice

Date: Mon, Oct 26, 2015 at 8:37 PM
Subject:
To: Brad Wechsler <[redacted]>, Melanie Spinella <[redacted]>
gain at 20 % not 28. . so total , 35.8%. tax rate. same for boat. and plane each around 10 m so total 7 m savings if both sold

Date: Fri, Jun 3, 2016 at 5:56 PM
Subject:
To: Heather Gray <[redacted]>
heather leon seems to not recall the issue of finding an alternative to the eschange agents resale cerificate. he didnt remeebr you suggesting a gallery instead. you mentioned that he did not want to get another gallery involved. ? has any of the transactions been audited using this method , which even i find agressive.

Date: Fri, Jun 3, 2016 at 3:02 PM
Subject: RE:
To: "jeffrey E." <jeevacation@gmail.com>
Hi Jeffrey,

As you will recall, we used this same exchange agent last year on the Calder 1031. At the time, we discussed the merits of using a gallery versus a commercial exchange agent and my recommendation to Leon was to use a gallery. I felt that there were advantages to using a commercial exchange agent instead of a gallery on the 1031 side (e.g., less likelihood of a breach of confidentiality, IRS familiarity with CDEC in the event of an audit, security of

funds), but that a commercial exchange agent gave us less comfort on the sales tax side. Leon did not want to use a gallery because he was concerned about confidentiality and he did not want to have to ask a gallery that he did not do much business with to act as exchange agent.

When Leon first discussed the exchange for the Cezannes with me a few weeks ago, I asked him if he wanted to use the same exchange agent as last year, or if he wanted to use a gallery. I said that a gallery carried little to no risk on the sales tax side, but I reminded him that he had not wanted to use a gallery last year for the Calder because of confidentiality reasons. He said to use the same exchange agent as before, which made sense to me because he was extremely concerned about confidentiality with the purchase of the Cezannes.

I will find out about sales tax audits and will let you know. The exchange agent has had a New York resale certificate since 2014 and has been engaged in art transactions like this since then, but I do not believe they have been audited. I will check, though, and I will also ask the Herrick lawyer if any of his clients who have done similar deals have been audited.

Best,

Heather

Source: The Daily Telegraph {Main}
Edition:
Country: UK
Date: Friday 15, September 2017
Page: 28
Area: 996 sq. cm
Circulation: ABC 477927 Daily
Ad data: page rate £46,000.00, scc rate £214.00
Phone: 020 7931 2000
Keyword: National Theatre (National)

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How the Oslo Accords became gripping drama

As Tony award-winning play 'Oslo' comes to the NT, *Con Coughlin* shares his memories of covering the actual events it depicts

A three-hour play about the Middle East peace process? It's hardly a subject to get the pulse racing. And yet, JT Rogers's new play *Oslo*, about the astonishing, behind-the-scenes negotiations that resulted in the historic Oslo Accords in 1993, won a Tony for Best Play on Broadway this year, and has already virtually sold out its month-long run at the National. Such is the demand that the production, starring Toby Stephens, promptly transfers to the West End in October.

Oslo dramatises a period of history – and a brief spell of optimism – that is now a distant memory. With so much of the modern-day Middle East consumed by turmoil and conflict, it's al-Qaeda, so-called Islamic State, Iraq, Syria and Libya that are dominating the headlines, not the peace process.

Even as we approach the 100th anniversary of the Balfour Declaration, whereby Britain committed itself to the establishment of a Jewish homeland in the uncultivated area of the eastern Mediterranean known as Palestine, the long-running conflict between the Israelis and the Palestinians is no longer the main story. So much so that theatregoers in New York were heard to remark after a performance of *Oslo*, "Oh, the PLO! I'd forgotten all about them."

Yet by taking the art of diplomacy as its subject, Rogers has fashioned an unexpected thriller out of the brave and inspired Palestinian and Israeli negotiators who came together in a remote Norwegian house to put aside decades of hostility and make peace. Their efforts were rewarded with a momentous ceremony on the White House lawn in September 1993, with Yitzhak Rabin, the Israeli prime minister, and Yasser Arafat, the PLO chairman, shaking hands to seal the deal in front of a beaming president Bill Clinton. And sitting anonymously among the thousands of global dignitaries who had flocked to Washington to witness this historic event was Terje Rød-Larsen, the cultivated, softly spoken Norwegian diplomat who, with his wife Mona Juul, made it all possible by enabling the rival delegations to meet in secret to thrash out their differences.

As a journalist covering these extraordinary events for *The Daily Telegraph* during the Nineties, I came to know a number of these players personally. Many of them are no longer around to reflect on Rogers's version of events. Rabin, the great Israeli warrior-turned-politician who agreed to make peace with Arafat, a man most Israelis, as one Israeli character in the play remarks, saw as being akin to "Hitler in his bunker", was murdered by a Jewish extremist in November 1995 in revenge for signing the deal. The mysterious circumstances surrounding Arafat's death in a Paris hospital in November

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401552537 - NICTHO - A23578-1 - 129616737

HOUSE_OVERSIGHT_023287

Source: The Daily Telegraph {Main}
Edition:
Country: UK
Date: Friday 15, September 2017
Page: 28
Area: 996 sq. cm
Circulation: ABC 477927 Daily
Ad data: page rate £46,000.00, scc rate £214.00
Phone: 020 7931 2000
Keyword: National Theatre (National)

2004 remains a source of controversy among his PLO loyalists, many of whom believe he was poisoned by Mossad, the Israeli intelligence service. By the time Shimon Peres, the Nobel Prize-winning prime minister of Israel who helped resolve many of the more intangible issues, died more peacefully aged 93 in 2016, he had become one of the most accomplished statesmen of our age.

But perhaps the greatest casualty from that era – when there were genuine expectations on both sides of the Israeli-Palestinian divide that the conflict might be resolved peacefully – has been the peace process itself, which today is almost nonexistent. When, for example, I told an Arab ambassador acquaintance I was going to see a preview of the play, he simply remarked: "No one talks about the peace process any more. It doesn't exist."

This makes Roger's examination of one of the most unlikely diplomatic dialogues ever undertaken all the more poignant, as it harks back to an era when reconciliation seemed genuinely possible.

The task facing the rival delegates when they first meet is a daunting one. For the Israelis, if the fact became known that they were talking to the PLO, the government would most likely fall. For the Palestinians, it would mean an assassin's bullet.

At the heart of this *danse macabre* stands Rød-Larsen, whom I met on several occasions in Jerusalem in the Nineties when the hard work had begun on implementing the deal. A quiet, patient man, he never seemed to be entirely comfortable with the rough-house atmosphere of the region, where disputes were often more likely to be resolved through rocks and rubber bullets than rational persuasion.

Toby Stephens's portrayal of Rød-Larsen gives him a great deal more zest and personality than I recall, but this neatly nuanced performance is key to the pace of this fast-moving, entertaining take on the events (Rogers has said that, in order to liven up what might otherwise seem a prosaic and convoluted political process, he studied the plays of Noël Coward).

My favourite scene from the play is the one where the lead Israeli negotiator, taking a break from the negotiations, entertains his Palestinian counterparts by giving an impersonation of Arafat as an effeminate narcissist, a portrayal I found entirely plausible from my own encounters with the PLO leader, whose vanity knew no bounds.

Uri Savir, who was deputed by Peres to run the Israeli side of the negotiations, was someone else I got to know during that period. An urbane multi-linguist of an academic disposition, I generally found Uri to be softly spoken and thoughtful when discussing regional issues. Philip Arditti's portrayal of him in the play, though, makes him out to be more like the uncompromising, muscular Israeli type, more usually found in the ranks of the security forces than in the diplomatic service.

Depictions in theatre of almost anything to do with the Middle East tend to stir strong passions among audiences. I was particularly struck by Rogers' sympathetic understanding of the Palestinian predicament. "I was very anxious about the combustibility of it," said Rogers in a recent interview. "I assumed there would be controversy [in America] only because someone would be enraged that I had allowed the 'other side' to have their say." Certainly Peter Polycarpou's depiction of Ahmed Qurei, the Palestinian finance minister sent by Arafat to make peace, admirably captures the conflicting emotions of enduring the pain of exile while seeking to wreak terrible vengeance on the Israeli occupiers.

Indeed, for all the quips and light-hearted banter, *Oslo* is, at heart, a deeply emotional drama. When the Israelis finally strike a deal with the Palestinians during a telephone call to Arafat's headquarters in Tunis, they think they can hear music playing in the background. In fact it is the battle-hardened veterans of the PLO sobbing at the prospect of being allowed to return to their homeland.

Ultimately, the play is an implicit tragedy about the failure of both sides to build a lasting peace on the basis of the painful concessions made during

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401552537 - NICTHO - A23578-1 - 129616737

HOUSE_OVERSIGHT_023288

Source: The Daily Telegraph {Main}
Edition:
Country: UK
Date: Friday 15, September 2017
Page: 28
Area: 996 sq. cm
Circulation: ABC 477927 Daily
Ad data: page rate £46,000.00, scc rate £214.00
Phone: 020 7931 2000
Keyword: National Theatre (National)

the Oslo negotiations. "Between our peoples lies a vast ocean," says Ahmed Qurei, the finance minister for the PLO, in the play, just before the negotiations start. Twenty-five years on, that ocean seems as vast as ever.

Oslo is at the National Theatre until Sept 23, then transfers to the Harold Pinter Theatre from Sept 30 to Dec 30. Tickets for both: nationaltheatre.org.uk

'Perhaps the greatest casualty from that era has been the peace process itself, which today is almost nonexistent'

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401552537 - NICTHO - A23578-1 - 129616737

HOUSE_OVERSIGHT_023289

Source: The Daily Telegraph {Main}
Edition:
Country: UK
Date: Friday 15, September 2017
Page: 28
Area: 996 sq. cm
Circulation: ABC 477927 Daily
Ad data: page rate £46,000.00, scc rate £214.00
Phone: 020 7931 2000
Keyword: National Theatre (National)

BRINKHOFF-MOSSENBURG; AP

JT Rogers, far right, and the NT production of *Oslo*, above. Clinton with Netanyahu and Arafat in 1993, below

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 4/8/2018 4:20:18 PM
To: jeffrey epstein [jeevacation@gmail.com]

Importance: High

Date: Mon, Oct 26, 2015 at 8:37 PM
Subject:
To: Brad Wechsler[redacted] Melanie Spinella [redacted]
gain at 20 % not 28. . so total , 35.8%. tax rate. same for boat. and plane each around 10 m so total 7 m savings if both sold

Date: Tue, Oct 27, 2015 at 11:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella [redacted]
Cc: Brad Wechsler [redacted]
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

Date: Wed, Oct 28, 2015 at 5:56 AM
Subject: Fwd: Detailed constructive list.
To: Lesley Groff [redacted]
please print two copes . re formattted so leon can go line by line ie . heading s question, gift answer. blank who responsible. time frame. fee paid when?

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella [redacted]
Cc: Brad Wechsler [redacted]
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex

films . etc.

From: jeffrey E. <jeevacation@gmail.com>
Date: Tue, Feb 24, 2015 at 2:20 PM
Subject:
To: Melanie Spinella [redacted]
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.

In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers,
home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.

I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.

Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .

We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

--

Date: Wed, Nov 4, 2015 at 4:45 AM
Subject:
To: Melanie Spinella [redacted]
okay, its time for you to decide how you would like to move forward. (fyi get your money from the 1031 . the screw up is only one of many,) If you decide to move foward on decanting. phaidon, note basis estate update , each requires many carefully orchestrated detailed steps. and precision . there are hundreds of millions in saving if done correctly and a huge mess if not. If you want me and my colleagues to do it , oversee it paper it and guide it, you should tell me. It is a big undertaking . If not , ok .. Brad and your crew can do it. I will have no real further involvement apart from confirming the outcome of my proposed structure, I will not risk the admonition of- they thought you said, they thought you meant, they understood it to be. but they said you said, (i e ,I asked at our meeting that accounting be done properly for bens house , what came back was ada thought that I meant that we needed to go back to the 97 trust and give him a full third party accounting of where his money had gone??!! I kid you not). I dont think brad should talk to jane heller without a fully fleshed out plan in place and even then it should be you.

Date: Wed, Nov 11, 2015 at 10:59 AM
Subject:
To: Richard Joslin [redacted] Joe Avantario [redacted] Brad Wechsler [redacted]
lets calculate the exact payoff amount for the leon note as of nov 30 ,DEC1 , dec 31. 1) does art space get folded in to phaidon. . middle cos disolved.? 2 collapse topco etc
open bank accounts for apoo
interest will be approx 50k per day . look at deduction.
note payoff docs- notaries . new docs. releases ? , accountings? disclosures? (gaming ?) art partnership . renew. will? repaper lease guarantees? macfarlanes. ? do we pay down 10m. of plane. ? proposal for airplane , 91 , 135. exec , jet. .? remove debra. from plane?

Date: Wed, Nov 11, 2015 at 11:00 AM
Subject:
To: Melanie Spinella [redacted]
we should discuss e trust and j black trust. , brad buying phaidon. artspace folding ? plane/ boat. foundation.

Date: Wed, Nov 11, 2015 at 9:09 PM
Subject:
To: Melanie Spinella [redacted]
we need to coordinate. brad bank, cannot be clumsy

Date: Fri, Nov 20, 2015 at 10:50 AM
Subject: agenda
To: Melanie Spinella [redacted]
1. brad or richard. makes litte difference. 2. gagosian . no written contract??!! fishy to me - who transfers 100 million dollars overseas without a contract ,- dont want you pulled into a scandal. careful especially as he is on the tax dept radar, . 3. I would like you to delineate what you would like me to do - the more specificity the better.- I think it important to avoid any misunderstandings as to each of our obligations and responsbilities. I will always give you my best advice. I have made my views re ada and the office clear . no hedging. . THEY should go. no hesitation . no zeus, your choice obviously. good news - I will not bring it up again. moving forward- These transactions will require a great deal of manpower over the next holiday month, every document needs minute review. . I would like to fix our fee agreement , in detail no later than this weekend . ie amounts , dates paid . entities paid. any concept you may have of" after care"? all on the table. .other questions such as how much to leave your children ,in what form, has no right answer. but you and I can dialougue as long as you like about issues of judgement. it is out of o friendship. not biz. (bill hellman as a trustee?) . we can talk about that during walks etc . I would like for you and I to go back to

having fun.

Date: Mon, Nov 23, 2015 at 11:53 AM
Subject:
To: Melanie Spinella [redacted]
25 minutes needed. 1 new and vastly improved plan, needs your thoughtful input. decisions on legacy paintings bronzes. books etc. 2. we need to reach fee agreement. and authorities.(alan and I spent time over the weekend,) , hundred documents to be drafted. 3. gagosiaon 4 revolver . 5 inspire - FBI . 6. Phaidon, solution. 7 plane. no need to reinvent the wheel. . (rowen).

Date: Tue, Nov 24, 2015 at 2:41 PM
Subject: Fwd: Loan
To: Melanie Spinella [redacted]
Please talk to him

Date: Tuesday, 24 November 2015
Subject: Loan
To: Jeffrey Epstein <jeevacation@gmail.com>
Cc: Melanie Spinella [redacted], "Alan S. Halperin" [redacted] Ada Clapp [redacted] Joe Avantario [redacted]
Jeffrey-given the high daily interest cost (50k+/-) on $$ borrowed which you pointed out yesterday, here's what I'm thinking, but I want to be 100% on the same page as you:
1. Close next monday on the credit line, but don't borrow any $$. (We can, of course push closing back but my preference wld be to close.)
2. Right now, at barry's request, Irene Steiner, on behalf of the trustees is reviewing apo1 and apo-o1. While probably not impt on a "substantive" basis it was (a) impt to barry and (b) is likely good for leon.
3. We are hoping to have signature pages to the trustees (and returned to us) by early to mid next week. (Ada will oversee.)
4. We will then get the new trust to bofa who, moving quickly (according to them), will have an acct open the following week, 12/7-9.
5. We need to manage execution of paperwork associated with decanting which I assume occurs once apo-o1 and bank acct are operative. (Ada I'm sure you'll be on top of this).
6. I assume we will move $$ to pay down loan the day or day after (?) apo-01 bank acct open. As you know we cld do this as early as next monday/tuesday but then cash will be sitting in apo-1 while we're waiting for apo-01 bank acct.
7. If there are sales of assets (or llc's) from leon to apo1 or apo-01 that needs to be buttoned down and organized asap.
8. Same if you want another NEW trust in the mix as that will involve paperwork and opening an acct with bank.
Let's discuss to make sure we're on the same page on process. B
Sent from my Verizon Wireless BlackBerry

Date: Mon, Nov 30, 2015 at 5:21 PM
Subject: agenda
To: Melanie Spinella [redacted]
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Tue, Dec 1, 2015 at 12:26 PM
Subject:
To: Brad Wechsler [redacted]

I would like to consider the gaming commmison disclosure dates. . 2 we should put to bed once and for all adas concerns re the bronzes. . alan should opine on valuation ranges? rather than estimates. . 3. Leons input re gagosian purchase. (trade in , 1031 if 17 likely transfer- . scream, phaidon. plane and boat. 4. I would like to review all assignment docs. decanting schedules. (exhibits). balance sheets for apo1-2 . . loan docs re transfer of narrows inside . 5. Leon should be clear regard future steps . pent etc. swaps , paydowns 6 mock-ups of all before trigger pull.

Date: Wed, Oct 28, 2015 at 12:56 AM
Subject: Fwd: Detailed constructive list.
To: Lesley Groff <[redacted]>
please print two copes . re formattted so leon can go line by line ie . heading s question, gift answer. blank who responsible. time frame. fee paid when?

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella [redacted]
Cc: Brad Wechsler <[redacted]
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

ate: Fri, Dec 4, 2015 at 2:07 PM
Subject: Fwd: moving forward
To: Melanie Spinella [redacted]
I had forgotten that Alan was actually at the table when i explained my note deal to you. it was at the end of the meeting described below. . as you will recall , not once , not even a peep did alan suggest contemporaneously his hand in the crafting, in fact brad said it was an idea. that HE brad, HAD HAD , from the begiining . my emails between alan and I that you can read , further confirm authorship. Im sure you recall the obnoxious tooting when alan said he agreed with my plan. .

Date: Mon, Nov 2, 2015 at 10:03 PM
Subject: moving forward
To: Melanie Spinella [redacted]
I have mixed emotions about what transpired today. really, You saw first hand in nauseating detail what i have been saying to you for quite a while now. Joslins answers were totally incomprehensible. the charts he prepared unreadable. Brads defensive posture was at a minum very surprising . He and I have recently gotten along quite well , I thought . Neither Joslin or Brad understood a 180 million dollar number . no cash flow

after weeks of requesting? odd. when you suggested that heathers behavior was emblematic of a sloppy office , brad said lets not talk about emblems??! bill pay , admittedly no change for the year. . plane not done. though it was the only thing i suggested doing first in july . . I sent you a list of 10 consultantts. brad said three, . i didnt want to push it. I was shocked that brad was opining on things he knows little or nothing about. tax issues. 1031. neg basis , note payoffs (the same idea he said he had had from the beggining??!!) . answers re LBF holdings that can be corrected (they cant) . valuations that have never been read. . When we met in your lobby he seems surprised that i was there. I dont know if he felt somewhat sandbagged. . . the savings on the note payoff is aprrox 33 % of 1.8 billion. real money if you do phaidon which i see no reason not to . if later josh and ben want to buy it back with you or without you they can. i will walk you through the structure one on one. . the losses will offeset the calder gain as well as apollo gain.
Im aware that seeing what you saw frustrated you. I felt badly for you.

You wanted a contingent deal. real value. etc. I will not of course hold you to your deal . . its silly. its not how i work or a reflection of our friendship. my proposal is as follows. I want away from your buisiness , but at the same time leaving you in good shape. I think you should pay the 25m that you did not for this year. for next year its the same 40 m as always, paid 20 in jan and 20 in july, and then we are done. I will give you advice and counsel but new people will be running your operating machine. I will oversee all the work that needs to be done you and I will hire new people , and it will be self running. (it was may in my house when you told brad it had been 5 months and you were getting fed up) I will set up a parallel . office , somenoe like wendy dolman or her quality is paramount. two accountants two bookeepers and two office admins. . alan and zoe will handle trusts and grats. heatehr diana george will be incolved in art partnership. if you want brad, analysts etc. and kids to do investments I have little to add in that regard ,except to be able to account for things properly. I suggest that the kids must have skin in any deal.
Alternatively , we can continue to focus on fun and let someone else do the things that you want done. and you and I can kibbitz about it all. structures outcomes risk, museums. charity, (joslins answer by the way was I had asked how much charity was leon planining to give this year , (the 2 m) he didnt include your foundation or the payment to me, or from debra and you??!!

Date: Mon, Dec 7, 2015 at 5:39 PM
Subject: Fee
To: Melanie Spinella [redacted]
Amount ? Paid in kind ? Financed ? Plane ?Paid to ? Non charity , charity . Fixed dates

Date: Mon, Dec 7, 2015 at 8:05 PM
Subject:
To: Melanie Spinella [redacted]
please re iterate that no further actions taken without careful document review. please

Subject:
To: Melanie Spinella [redacted]
Leon,
As you are well aware, There is little I won't do for you, or at least try to do as a friend, and a great deal that I have already done (both known and some things that willneed to remain unknown.) Our arrangement was for me to architect sophisticated structures that would be beneficial to you. that is what I have done and will continue do in order to fulfill my obligations under our agreement. The discovered fact that you in reality need an entire family office built from scratch has been trying I have aleady agreed de- facto to try to help. I would suggest that Phaidons payroll and attention pales in importance to your personal structure,which has taken a back seat, Some of my suggestions regarding the Eysium office are as follows you will need a budget of 3- 5 million per year. CEO 1 million, new tax person to work with rich, 250. new bookkeeper ,200 new paralegal to work with ADA ALan etc , coordinating with Apollo, Akin , paul weiss , new acct openings , sec filings , sales tax review, etc. $150 . art point person. loan , inventory,

purchasing support, $?? software servers. video conferencing, tax oversight.
I believe You should rapidly address trustees , gift trust, succesion, wills of debra and children, , monetization events , cash flow. etc I can of course share my experiences with you on each issue.
WIth regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the begining of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)
With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex isssues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.
talk later..

Date: Sun, Dec 28, 2014 at 5:18 AM
Subject: jobs ahead
To: Brad Wechsler [redacted], Melanie Spinella [redacted] Ada Clapp [redacted]
1. review accounting system. Book keeping softaware. staff, (senior accountant) methods on line banking, brokerage. cash mgmt. airplane reimbursement. boat sale. art purchases sales use and sales tax. tax filings FBAR FATCA, gaming commsion, pfics, insurance . uk co law.
2. review docs for TRA BRH grats, trusts, heritage will, insurance, art lending. medical, springing powers. two fire drill books. one needed for injury. other for death
3 review bills . boats , planes, legal, (PW, McFarlands all outside. legal and accounting. Toms bills over 400k . house projects. south ny ben
4 cashflow projections tax projections , interaction with Apollo accounting tax, Phaidon ,art space ,and Regan. legal accounting. audit
5. children meetings , review to date and allocations
6 review all role in payables. files scanned, no paper
7 review invesmtents for tax basis and unrecognized gain
8 schedule of all hedge funds . redeemables commitments etc.
9 charities pledges strucutre, staff ,

Date: Fri, Feb 20, 2015 at 5:52 AM
Subject:
To: Melanie Spinella <[redacted]
1) pg 1 A " unequal shares" . pg 23 "removal of trustees " absolute. dont be confused with abiltiy to set up seperate trusts, , 2) I am reachable this afternoon in europe. on cell. 3. on another note . -our financial agreement ended months ago . seperate from the art partnership (which i was told yesterday to my amazement is still not funded) . i am obligated to complete ? the time i have dedicated since oct/ dec has been spent mainly as your friend. tom, brad though i am fully cognizant of my responsiblities. I will try to help find people. I am not good at human resources. howevr If I don;t think they are good enough for you. I

will continue to say so , and you obviously decide. but I will reiterrate even in the face of your "nobody is good enough argument." keeping foremost in my mind that you and I have only beeen shown a very tiny handful of people. 4. I find the friction over fees , counterproductive. in an attempt to avoid it I had suggested a multi year deal early on. you rejected it. I then suggested, and urged you to have an option at a fixed fee , you also rejected that .you wanted the fee payment only at the end I argued but ,conceded. I suggested a structure that tom didn't like. you rejected it . 5 I suggest you make a fair proposal.- that i can either accept or reject. some payment up front this time is a requirement. I am willing to modify any outstanding obligations. - there are creative ways to assure you of your desired characterization of those payments. 6 you should open accts at Deutsh . and goldman. I am told that eilleen has set up over one hundred bank acccts for you???!!. few relevant 7 you should immediatly demand a list of all her acct authorites , exec poistions . director etc. bank authorizsations. etc. talk later or over the weekend if you like

Date: Wed, Dec 9, 2015 at 10:16 AM
Subject: Fwd:
To: Jeffrey Epstein <jeevacation@gmail.com>
kkkjkjjjkjjyou said

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella [redacted]
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.
In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers,
home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.
I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with

little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you

required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine . We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Fri, Dec 11, 2015 at 12:19 AM
Subject: Re: Fw: sched
To: "jeevacation@gmail.com" <jeevacation@gmail.com>
Cc: [redacted]
Jeffrey-joe tells me you want this to go live on 12/21. Possible, but an awful lot has to go right next week logistically for everything to fall into place. We'll try....

From: Brad Wechsler
Sent: Thursday, December 10, 2015 05:36 PM
To: 'jeevacation@gmail.com' <jeevacation@gmail.com>
Cc: [redacted]
Subject: Fw: Fw: sched
On different subject: general time frame is: docs (notes and purchase and sale agreement to you tomorrow end of biz); incorporate your comments monday and get docs to trust attorney tuesday; contemporaneously meet in person with you tuesday or wednesday and do a dry run. On these days ada will also take the trustees through outline of docs they will receive thursday. Docs to trustees, leon et al on thursday and signatures gathered by friday for first close 12/22. Tight but doable. Ada, alan agree?
PS: ada, you shld begin to think abt where people are (jh, rr, bc, ldb) next week.

From: Heather Gray [mailto [redacted]
Sent: Thursday, December 10, 2015 05:24 PM
To: Brad Wechsler
Cc: Jeffrey Epstein (jeevacation@gmail.com) <jeevacation@gmail.com>
Subject: RE: Fw:

Subject: Re: Fw: sched
Barry-what we're going to do with jeffrey will be "small picture" and detailed. It might be better for you and jeffrey to have a higher level conversation some time next week; either way you'll have access to everything, obviously.

From: Barry J. Cohen [mailto [redacted]
Sent: Thursday, December 10, 2015 05:55 PM
To: Brad Wechsler
Subject: RE: Fw: sched

I wouldn't mind attending a meeting or portion of a meeting with JE. If he is the mastermind, and you want to move quickly, it might get a lot of questions resolved quickly.

From: Brad Wechsler [mailto[redacted]
Sent: Thursday, December 10, 2015 5:37 PM
To: 'jeevacation@gmail.com'
Cc: [redacted] Melanie Spinella; Barry J. Cohen
Subject: Fw: Fw: sched
On different subject: general time frame is: docs (notes and purchase and sale agreement to you tomorrow end of biz); incorporate your comments monday and get docs to trust attorney tuesday; contemporaneously meet in person with you tuesday or wednesday and do a dry run. On these days ada will also take the trustees through outline of docs they will receive thursday. Docs to trustees, leon et al on thursday and signatures gathered by friday for first close 12/22. Tight but doable. Ada, alan agree?
PS: ada, you shld begin to think abt where people are (jh, rr, bc, ldb) next week.

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Sent: Thursday, December 10, 2015 05:24 PM
To: Brad Wechsler
Cc: Jeffrey Epstein (jeevacation@gmail.com<mailto:jeevacation@gmail.com>)
<jeevacation@gmail.com<mailto:jeevacation@gmail.com>>
Subject: RE: Fw:
No, I'm meeting with him at 9:30 am tomorrow.

Date: Fri, Dec 11, 2015 at 9:49 AM
Subject: fee
To: Melanie Spinella [redacted]
elegant solution ;re fee. , 30 million paid now. with purchase of noel kalb, paid with funds from the drawdown. you should use and keep open the line for the full 30m and leave it outstanding until its expiration. in four months. legit biz reason, very nice , - the balance of the fee - paid in kind either low basis art . or interest in either milenium ,lone cascade ,or king street.

Date: Tue, Apr 14, 2015 at 5:53 PM
Subject:
To: Melanie Spinella [redacted]

saved you 500k at the last minute, . brad has had the same chart since march 16th, its his job to review NOT MINE .appears he is one of those living in the dark leiwe. I found 8 million dollars today, missed deductions. . not yet in the numbers, .?

Date: Wed, Apr 15, 2015 at 8:59 AM
Subject:
To: Melanie Spinella [redacted]
1 did the paul weiss bill get paid ??? 2. Talk to me before signing anything today important
10m paid today to gratitude america, a 501 c 3, willl make last year complete. 20 million paid today ftc . 10 million july 15 5 million sept 30. , 5 million jan 1 for all of 16 . tax savings paid at 37 percent . of net. savings. 50 million credit. net. so 150 million free . 600 savings 225 million owed. - 50 credit, 175 owed.

Date: Mon, May 18, 2015 at 8:17 AM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella [redacted]
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?)):: .

in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to eat the apple from the knowledge tree)
. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain) books as they were mysterisously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan
agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.

still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with :
As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Thu, May 28, 2015 at 8:53 PM
Subject: ulysses 2.0
To: Melanie Spinella[redacted]
I realize it is only due to a lack of understanind of the job ahead. and not out of any sense of unwillingess to pay
- as opposed to merely hiring people to set up a family office, someone will have to do the following- separate from the art partnership which is my responsiblity . there still needs to be a huge amount of work done for 2015,16. not to mention that brad at the moment is going to have train the incoming team?? your call
strategic decisions re estate and other planning , sale of phaidon etc. . in addition setting up for the accounting for each strategy ie.:
income, estate, gift ,sales and use, transfer excise picasso, 1031 calder. . review and detailed oversite of IRS SEC GAMING NYS. real estate, entity valuations (many) tax filings- disclosures, follow up of grats,

trusts ,defective trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank account need to be rationalized, not only having brad step in to children investments . gift taxes, trust , loans, notes. payables. expenses allocations . . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments funds and charities , dividend treatment -important review of transcations relating to BRH (amendments) TRA sale (nuanced) , shareholder agreements, bank loan agreements new bank relationships. . wills, construction accounting and oversite , contracts planning permits etc..employee rules, regs, . checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, . stock options,(ie environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) review of boat expenses plane expenses, depreciation issues refunds etc. . rationalize all outside counsels and accounting firms
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, , Apollo in house counsel.
set up and oversee brokerage accounts at JPM DB GS and thoughfullly trade
. new IT system from top to bottom full time IT person
new accounting system - on- line banking cooridnated with reports . fire drills as per caruci (he sounds good) and . audit system,s . review of john murphy? joslin? dag? eva? .
in house, review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy re:
As new facts on the ground develop , phaidon debra, children meeetings, involvment ,
trustees adjusted, stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe?. real estate?, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc
you are sitting on over 100 m of cash???!!

Date: Fri, Jan 2, 2015 at 2:55 PM
Subject:
To: Melanie Spinella [redacted]
Leon, I decided last week that there was little or no upside in disturbing your well earned holiday especiaily as you seemed so peaceful happy and smiley ,getting yourself in shape and truly enjoying your family time. etc. however the situation in your family office is unresolved. I am aware that brad starts monday howver, two last days of the year madness. timber.deal not complete no jpm,acct activity no partnership docs , old stock sales not complete , no bank doc redo. no phaidon note restructure, ., no boat expense review. airplane same ,topco midco.etc still not finished (trustee) , projections mixed with fiction. , legal exp out of control. no care for admin, silly (audit). tom conversation with joslin. notes. debra, trustee notes. trustees hiring . bens audit. interest payable made hoopjumping last day of year. after weeks and months. of lectures , gifts to discuss- staff. -houseproject mgmt. . I will continue to try , I had offered ajoint call with eileen before you left. as i said before , joslin takes instructions from eileen. he said it was made clear to him that he doesn't work for me but works for you. . I tried.

Date: Tue, Dec 29, 2015 at 7:26 AM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>
Transaction complete !
. this - in spite of your collection of Elysium misfits. !!!
With Brad out of the office and unable to run his usual interference , the level of his utter incompetence was brought front and center, he may be a step up from Eileen, but if he is , then it is not certainly not by much, . Though you and I have spent many many hours discussing the importance of details and mechanics. I was not shown one document re phaidon,- not one.. Brad wanted to keep it private between he and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is wholly ludicrous - to summarize - the list I provided to Brad last December - things I thought were a priority to get done after consulting with your office still remains virtually undone.

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.

As your friend and in order toturn the page. I will try to be constructive

The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re- do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them

in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.

From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not

forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

--

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

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To: Melanie Spinella [redacted]
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10m paid today to gratitude america, a 501 c 3, willl make last year complete. 20 million paid today ftc . 10 million july 15 5 million sept 30. , 5 million jan 1 for all of 16 . tax savings paid at 37 percent . of net. savings. 50 million credit. net. so 150 million free . 600 savings 225 million owed. - 50 credit, 175 owed. 600 savings 225 million owed. - 50 credit, 175 owed.

Date: Tue, Jan 5, 2016 at 6:36 PM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>
Transaction complete !

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I preferred to have no financial interactions. I dont have many friends and didnt want money to interefer with our unique relationship. For five years you had the kind but goofy Eileen Alexandersson managing your accounting , legal, investments. reporting, trusts etc. When I told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there is no " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a postion to manage mirage investments I sent you a note saying instead you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me was tasked with hiring new people and as you wanted him to take ownership of the staff,he conducted many interviews. you may recall that as late as may, you told him in my presence that he had had six months and had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions. ,(last nov) 11 million found in dormant accounts and 4 million in the drawer. errors in cash flow both personal and Phaidon. Oversight on new grats first at 22 and then at 19 that were done without my consulatation were resolved only as aresult of my intervention. . 600 million in after tax savings was just accomplished.

With Brad out of the office and unable to run his usual interference , the level of his total and utter incompetence was brought clearly , front and center. He may be a step up from Eileen, but, if he is , then it is certainly not by much, A major difference is that Eileen knew she was over her head. Brad struts his stupiditly whenever he gets a chance.

A critical example. - Though you and I have spent many many hours discussing the importance of care

and attention to details and mechanics. with regard Phaidon I was not shown one single document , not one.!! Brad wanted to keep it private between he, and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is totally ludicrous - to summarize - the list I provided to Brad last December - of things I thought were a priority to get done - still remains in the whole unresolved.

The IT, is virtually untouched and is still in desperate need of a format - reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , when either you or brad ask for it - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told by Brad not to share the outside proposals with me - brad has no idea even as to what questions to ask. he knows little of finance, is bullshitted over by almost everyone in the office. a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant a simple emblematic example- 3 million in deductions Im told were taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the only real question you were focused on ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing!, a construction project run amok , no budget, the coo fired after only 3 months. , no clue . fyi artspace financials are also a total mess. (no receivables ??). when i asked for a list of what got done and did not, i received the email from Brad basicailly mind you own business. so much was promised. !!!

As in your words probably your closest friend and in order to turn the page. I hope the following to be constructive

Here is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain a paramount requirement 16 months after i emailed you re their importance. THe Phaidon transaction papered and structured as contemplated DOES NOT WORK , its as simple as that. DOES NOT !! I suggest again that you re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re- do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. Halperin has a conflict that should be addressed., A strategy of the use of art should be implemented. . you have tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, I still think you might consider a Rothshcild bank transaction they have 150 b and a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , complex 2 billion in taxes on transaction. ?!

the facts as i see them

in June and then again Sept, we both agreed to a 50% of phaidon payout., then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were

surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay

I included in this letter the email i sent to you on April 15, the day i was examining your returns It laid out my understanding of the compensation for a transaction of the magnitude to the penny of the one just completed. though the number was great it was clear. When it appeared that the details could now be worked out I was the first to say , it is too much money, however.
From day zero I proposed to discount to 50 - 60 million the fair price of the transaction just completed . including Phaidon. . though this amount was already substantially less than our agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of fee outstanding till March) ,I provided as you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any wayt to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the payment associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than originally contemplated) for both transactions . Leon I feel It was remarkably unfair. I wondered whether brad even knew of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction was even begun, and had already been heavily discounted, out of friendship, from our agreement . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon showing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charitable decisions , helped with fincancial statements, gaming commission. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesn't exist
ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . ask them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. separate from making it more secure though you are not a trader with inside info the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describe to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposition in the estate. . etc. ask brad to show you the liquidation of the intervening art space cos? that has been on the table for

months. .

Date: Wed, Jan 6, 2016 at 3:44 AM
Subject: Fwd:
To: Jeffrey Epstein <jeevacation@gmail.com>
PLEASE READ CAREFULLY ,
Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of detailed time. I do not know how, and if ,to move forward - our last transaction. a transaction which you saved 600 million in tax. even if as you say it could be 20 years away , (i hope longer) discounted to today is a savings of 300 million . for some reason you chose to ignore our agreements , verbal written and emailed - and decided that it was only worth 8 million dollars to you. . (assuming phaidon -richard happens. the calculation that you can see is a 24 m savings not including artspace and debt benefits- certain to come later .. IMPORTANT NOTE
: the phaidon transaction as currently contemplated will not work . NOT CLOSE
When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I greatly preferred to have no financial interactions. I don't have many friends and didn't want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind, but very goofy Eileen Alexandersson as the sole manager of your massive accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his biz school org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions on the returns. a cashflow that is misleading helped prepare financial statements (april) Oversight on new grats- first at 22 and then at 19 that were done without my consultation and were "resolved " soley as a result of my last minute intervention. . 600 million in after tax savings was just accomplished. (BTW- for some reason you left the 30 million outstanding that I had said should only be done" if" that was my additional fee. and not used for non biz purposes and not art.

Sorry but .,
in June and then again Sept, we both agreed to a 50% of phaidon payout first projected at 20 . but less when artspace and debt taken out, - then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the art space investment will also lead to a write- off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay.

I include below the email i sent to you on April 15, the day i was examining your returns It laid out my understanding of the compensation agreed for a transaction of the magnitude to the penny of the one just completed.ie 600m When it appeared that the transcation would and could go foward I was the first to point out that our agreement would cost you too much money, therefore
From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for

all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.

Date: Wed, Jan 6, 2016 at 12:44 PM

Subject: Fwd:

To: Jeffrey Epstein <jeevacation@gmail.com>

PLEASE READ CAREFULLY ,

In the spirit in which it is sent. our friendship is intact and solid , though ,it has taken a hit.

Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of my detailed time. I do not know how, and even, if ,to move forward - . After months of hearing that you would have no problem paying a large fee if you could only ascertain value. The last transaction. a transaction which you saved over 600 million in tax. declared bullet proof by your attnys, and even if you want to disoccount for its future realization, creating a savings of over 300 million real dollars. For some reason you chose to ignore our agreements , verbal written and emailed -and at the very last minute , after the deal was complete decided that it was only worth 8 million dollars to you and your family. . (assuming phaidon -richard happens. there is a 24 m savings not including artspace and debt write down benefits- certain to come later .. IMPORTANT NOTE

: the phaidon transaction as currently contemplated will not work . WILL NOT !!

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I greatly preferred to have no financial interactions. I don't have many friends and didn't want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind, but very goofy Eileen Alexandersson as the sole manager of your massive accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his biz school org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions

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more details

From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.

Date: Fri, Jan 29, 2016 at 2:39 PM
Subject:
To: Melanie Spinella [redacted]
you've agreed that

Your office is a multi billion dollar responsibility. your children will inherit it , in order to oversee their financial lives- I feel for you, truly ,but the facts are the facts, your ceo (Brad) has provided one bad document after another for over a year , no getting away from it, , bad cash flows no new IT, each time with " its gettting better " no in fact -! its not. - the excuse, that Brad is not the numbers guy, is ludicrous. of course he didnt actually prepare the statements. - no ceo would ,- but over and over he presented them to you and me , after , holding them back for his personal review multiple times and after multiple drafts. weeks of his editing, the consistant but "inexplicable "missing the obvious serious errors . (gaming) inaccuracies, (cashflow) and mistakes (tax returns). why, ?! the simple answer is that at best, he is a c minus, (note. I, like you ,also give points for effort.)- ! an elegant art partnership gone fallow. ??!!I and its core reason to exist. not used ? no docs for plane?, still ! why? no docs for decantings why? the docs for deal 1 received last night , " no docs at all for deal 2, the biggest " . why wasn't Tom brought in , after 4 times of my incessant reminders i spoke to him , he knows little of either transaction except for over view. never saw pahidon anything except projections until yesterday ? ?and this after your clear admonition etc. re the trading accounts no activity, at all,

Barry Cohen is great. more like him please .
you asked , - I did my best trying to train your brad chosen people in the face of my telling you that they were never going to be more than c-minuses, thousands of emails thousands ? Brad at its head . you can't as a ceo, have an accountant give you multiple pages with the most important numbers missing altogether and not notice, you and I saw the errrors right away ,as did my very junior bookeeper after only a cursory glance. He told me he didnt know the details of his note? ! , my guess is that he wanted to pay less. no more than that, any other story is blather. its silly. Talk to richard yourself.
re your estate. Yes another Brad issue - your will, needs revision. the tenants in common structure I assume Alan has carefully walked you through. it is way overdue, needed and exciting. I won't list the more serious issues in an email but we can speak over the weekend.

How can I help? We agreed at the time when you hired Castrucci , that when you fired him, I would bear no responsibility because it was clear that he shouldnt be hired. brad and you both said ," its on us", but... the equivalent of your art consultant pointing to a picasso and calling it a renoir. then a brancusi and calling it a michaelangelo. those were the types of erros that i saw immediatily, you said give them more time. at least they saw it was a painting and not a photo?

being weaned of our biz /pay realtionship has been our mutual goal. However since novemebr, you chose to do so by ignoring' our agreement re, phaidon,and your oft stated commitment to me of large payments for large value, (37 percent was our number). chose to pay me a number picked by what appears to be only by whim,- have yet to justify it except for telling me that you and Brad Karp talked.. .

What should we do? the next two years in biz world appears to both you and I , very fragile. Im happy to have brad sit in ?

Date: Thu, Oct 15, 2015 at 10:38 PM
Subject:
To: Melanie Spinella [redacted]

Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family

office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
today is Oct 15
With your full knowledge I paid out 8 mil to my staff before june, . so i guess I can safely assume that after consideration of all the things I did for the entire past year separate and apart from your unique free "after care" concept. , what you thought was ultimately fair was the contribution of 5 million to a foundation and a total of 2 million dollars to me.

Date: Thu, Feb 4, 2016 at 10:01 PM
Subject:
To: Melanie Spinella [redacted]
josh's arrival cut short our needed conversation. I understand we have a difference of opinion. friends sometimes disagree, I shook on the 20 so you have no further obligation, none, I am willing to have brad karp hear both sides. as my view , you and i had an agreement. on phaidon /publishing, and then a long standing what you say is 28 , which is correct AFTer TAx. , 37 pre. . that was our numbers. I was clear what i thought the transactions were worth. far less than full. alan etc. , had you said i will pay you only 20 . i would have said ill pass. you never told me that 50-60 the number that i put on the table at the very beginning was not right. you asked that i lay out my plan step by step. and what i believe would have been the fair thing to do is say to me, I will pay you only 20 if you do as i ask, not tell me for the first time only after i laid it all out . had it not been you, i would have required payment in escrow. BEFORE fyi the reason I sent you an invoice so that if you decided that you wanted me to continue this year . it would be applied to last years income. I think today was a beginiing for you. I am glad I will meet wendy the 23, rd, . separate and aprt from being your sounding board for personal issues, I do not see my involvment moving forward.

Date: Wed, Feb 10, 2016 at 12:56 AM
Subject: Fwd:
To: Melanie Spinella [redacted]
this was sent four months ago, nothing has changed
sent oct 15. before big transaction.
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
Date: Thu, Mar 3, 2016 at 3:31 AM
Subject: ask alan why he hasnt explained this to you since novmebr
To: Melanie Spinella [redacted]

Tenancy in common is a type of shared ownership of property, where each owner owns a share of the property. Unlike in a joint tenancy, these shares can be of unequal size, and can be freely transfered to other owners both during life and via a will. Even if owners own unequal shares, however, all owners have the right to occupy and use all of the property.
Date: Sun, Mar 13, 2016 at 12:55 PM

Subject:
To: Melanie Spinella [redacted]

The fire drill documents received should be the final nail in the coffin of Alan and Ada, . It is inexcusable, , ludricrous and in brads words "insane "or yours, " unexplainable" that the two people that you refer to as your estate attnys , NEVER EVER took the time to actually read the documents that have the biggest efffect on your family and estate upon death or disablity, its impossible.!!! IMPOSSIBLE . after telling me that they were confident that everything had been read , and after years , of you telling me that Im not an attorney, it is clear that my telling you that you have c quality people was over generous, , I received a first draft of the summary of documents. you should read them for yourself. . executive committee issues. , unclear tax. contradictory provisions,your reps having to rely possibly on a fall back to delaware law to protect your interests, even suggesting that even if they would like to fall back , in some instances - no case law. other crazy- provisions that are personal to you , instead of you and your successor ? two pages of " open to interpretation" .or aha , maybe something is wrong! as ie, your rep, after death has no right for information on BRH? ! if you and another founder are dead , the exec commitee has no decision authority, if josh and mark want to fuck your heirs, its easy, black family partner docs dont deal with successionl YOU deserve better . fyi, after a month of brad ada and alan ,on the project, still not willing to share with me a final, they are all embarassed. and full of excuses .

It will take wendy and a new team 6 to 9 months to put your house in order. , new cash flows. new accounting system, airplane rethought, , you new hires can find deals , they can familiarize themselves with your current investments , but should not be doing the accounting for them, .
your will is still not amended, ?! the tenants in common not even explained to you. if something happens to you and debra, no real direction for the foundation. . etc

--
Date: Mon, Mar 21, 2016 at 4:17 AM
Subject:
To: Melanie Spinella [redacted]

glad to see you are personally on the mend - as well as the fence. -- As you know i dread money discussions with you-- however -we should address the issue of what you would like to do moving forward. re-do family office, accounting trusts , estate and apollo agreements . Along with your " payment " last year we agreed . no further obligations on each side. yes, i continued to moan. I realize that though I ve done quite a lot this year already , it is not your responsibility. . As you often like to remind me- you've paid a great deal of money to date. that being said - If you want my involvement moving foward, I suggest you pay my regular l fee of 40 m . 20 now . 20 on completion or as per the invoice issues at the end of last year pay 30 all at once. -

To help out . im keenly aware of your current cash position. so I will consider an in-kind payment - real estate (Miami), ,art , financing of my new plane (allows you to spread over years or of course the preferred cash. Get rid of Castrucci,it is over a year since the same story of findign the right guy at the top. you entire accounting needs to be re done. , office downsized, reporting re done. meetings to recitify, categlorize , the various docs re appollo , rowen , suydam, alan etc. Brad can direct investment guys, (hopefully) my people will be in your office for a few months . reorganizing IF you decide not to pay I fully understand, as I m sure you will re my no longer spending any serious time on these things.
Of course re any non financial issues , I am always there for you and will continue to be the best friend I can be .
Steve jobs said that everyday he woke up , and asked himself , if he knew he was going to die tomorow , would

he do the same thing that he had planned for the day- he wanted to check that he was doing things that he really wanted to. after three days of getting back an answer of no, he would change what he was going to do. . he also did not believe in LONG term plans. I dont think either one of us will figure out what we want to do long term so my thinking is that we should try to have fun everyday, and welcome serendipity.

I think another trust and estate lawyer should be brought in to deal with the issues of how not to allow your family to get screwed by your partners on death . Alan, for years told me that paul weiss had drawn the docs so no issue but when recently pushed by my new fire drill he asked akin to draft .?! PLease ask brad about why he keeps talking about flow . I dont know what he means, its so silly . . this is only about money control and protection .
I am leaving monday night now. free to speak in the afternoon

Date: Thu, Apr 28, 2016 at 1:55 PM
Subject:
To: Melanie Spinella [redacted]
Lets start. I am aware that you are currently angry at the world. . me, karp wechsler. even yourself, all willing absorbers of the current high heat. (though you ,calling me ,Debra , did take away some of the sting) I am sorry to see you this way.
emblematic ; I was asked to opine on whether to hire castrucci. an hour after I gave a preliminary yes. . I called you then texted you that i had thought more about it and changed my mind. The next day brad called and asked for my vote. I told him ,in no uncertain terms it is a no , I categorically vote no. I called you . you came to see me . I said it was a bad idea. you said you were going to do it anyway , I said and followed up in writing IT IS A MISTAKE . and added Please don't come back to me with anything suggesting otherwise , you and I should be clear I think it is wrong . A very strong NO . you of course can hire whomever you like.

early on I told you I thought Tom remarkably careless . Eilleen goofy and your art lawyer not well informed to say the least. you told me Tom was a senior partner. Eileen had headed the trading desk , and Ralph Lerner had to know what he was doing as he wrote the book. . I said I thought you deserved better ,should get better people and no , I am not an HR person. yesterday you told me that the reason you have hired whomver you could find was to avoid being dependent on me. a decision by far , not the best place to try to save money) Joslin- who you say I hired . I neither found nor hired. With a two person given choice I approved joslin over some woman that eileen preferred. against my repeated advice you and eileen decided the pay range at under 300k . I told you at that time that I would personally pay the difference for a higher quality person, that was years ago . I have sent over a hundred emails to you clearly saying he needs to be closely managed by better professionals. initially , that referred to Eillen and Ada.and after, brad. john etc. THere are many emails each and every month from me, telling you , he is slipping failing cracking fragile. . crazy, nuts, heading towards incompetence. Unless YOU- TAKE ACTION! when I pressured him for accurate numbers , you told him, to tell me, that he works for you and NOT for me. . When I continued to press for accuracy from your office , you told me that they were now all afraid of me and i should let brad communicate any requests, (you now tell me " we know what Brad is"?). When I told you you office needs to be reviewed and changed you told me i was being destructive rather than constructive. when i ultimately confronted joslin, in an attempt to protect you, told him that his numbers were wildly inaccurate , you told me that i had caused his ultimate resignation and now have an affirmative obligation to fill in the resultant gap.
I did give you a bad number , and apologized as soon as i realized it. an error that was an embarrassment for me , the fact that that the accurate number is still way below what you agreed to pay , has fallen by the wayside.(the preposterous argument that the end of year transaction was Alans idea , which you now know was not true and that me not receiving Phaidon documents was unexplainable. was your justification though, for non - full payment)
Hopefully You will recall that when you initially asked for my help. I declined repeatedly with the admonition that that having a financial arrangement is fraught with danger and could complitcate our friendship (as you will be unhappy paying what you will view as a large sum. while choosing to ignore

the financial benefits,). In Bedford , I repeated my concern. THe current circumstance is distressing to me , I have done my utmost to keep you safe. and will continue to do so. reckless choices in accounting or otherwise does not bode well. at each turn I have put your interests first , including in some instances attempting to fight your choices.
your current circumstance needs nuanced attention. as you know, there are a few areas with very serious consequences. whether it be , having Ada , form grats without review, brad doing phaidon without review. payments make without review.merely in order to be weaned , is one more high risk choice. review of outside accounting firms , CANNOT be done by brad. to have your accounting dept sit in on Alans trust accounting lecture . in order to learn the filed is reminiscent of elieen reading the tax regs. (she also was going to take a course)
I am here in New York today. should you like to resume

Date: Mon, May 2, 2016 at 12:51 AM
Subject: Fwd: Valuation Discount
To: Melanie Spinella [redacted]

Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

---------- Forwarded message ----------
From: Halperin, Alan S [redacted]
Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan
Date: Tue, May 10, 2016 at 12:38 AM
Subject:
To: Thomas Turrin [redacted]
did you get the agent?

Date: Wed, May 11, 2016 at 1:50 PM

Subject:
To: Brad Wechsler [redacted], Melanie Spinella [redacted]
grats 3,4, 5, 6, also need accounting documents and backup. year 2014. other info request to follow

Date: Wed, May 11, 2016 at 2:19 PM
Subject: Re:
To: "jeevacation@gmail.com" <jeevacation@gmail.com>, [redacted]
A couple of questions:
1. Jeffrey-you saw the format in which we organized the back-up for year one of grat 1 (quite thick/alot of back-up).
Does that format work (for you and internal use) or do you want it simplified/modified. Let's discuss.
2. Since this will take the focus and effort of a lot of people (just to pull and organize the various records...both legal and accting, I'd like to tell the staff that we are answering an "information request" from the irs on the grats. It will generally be helpful for them to know why the work is impt.
You and leon ok with this?
Will call you to discuss.

Date: Thu, May 12, 2016 at 12:17 PM
Subject: tight schedule lets try a set time to speak
To: Melanie Spinella [redacted]
Leon, you hired me to produce a work of art. it was not inexpensive. the value far exceeds any other piece in your collection.- by FAR . It took me 30 years to be able to craft such a work. I understand your desire to modifiy my work, in doing so you have brad telling me , just a bit more red., here let me show you, you yourself pick up a brush a add some strokes. you have joslin spray water on it to maintain it. I vigorously complain that joslin in ruining my work . . you describe me as zeus, i describe it as artist and a reaction to his work being ruined. however Im aware that you own the work and you have the right to paint over it. tear it up , put it in the closet in the basement . its yours.
I was told that Toms office is sending someone in ,or some people in, to review "some things." brad told me ,the partnership accounting. I know absolutely nothing more than that. though bringing in his team was my idea . Having them review things without even asking for my input , or let alone my direction ,is ridiculous. but.. I guess you wanted to save money. ?
The audit has brought to the fore the lack of your office quality that i have been violently squawking about. ie . children playing with works of art. . It is inconceivable to me that John castrucci is still there , joslin part time, but relied on . joe error prone and brad a corporate bandleader talking about the office's finance team, accounting dept, and directing wendy to do things that are clearly not in your interest. (saving money again ?) its nuts!! . a still non-existent IT dept. impossible , it was the first thing on my list of things that were needed to be done. Still no trading accounts to speak of , though its prophylactic quality has been discussed over and over during the past three years . computers do not read Page Six . the women at the IRS do. ! you said your motivation in keeping this group of part timers was a consequence of the high cost of my artwork. . the unfortunate result was easily predictable. - now
If you want my and my atelier to continue, I will oversee the audits. take charge of the TRA BRH assignments and review 2012 amendment options!!(note :your redo of the estate fire drill has not progressed very far). Lots of paper needs to be collected and reviewed, At MY direction. the outside team will be brought in at my expense working for me and you. coming in for interviews and reviews, . sucession, technology, tax and compliance. investment reporting , , computerized timelines for filings etc. . household classifcations and reporting with a system of best practices.
My goal is clear - to end, not extend , our financial interactions. you will have a machine that works , it will not be complexto oversee , to create it, is some thing else . Unfortunatley for us both, the price for my works has not changed since day one. 40m per year, I m willing to discount it to 35 as I did give you a bad number when asked and should pay an embarassment fine. Im also aware, as you made perfectly clear . that you have already paid what you consider a great deal of money, for my work , but again its value exceeds

anything else by far in your collection at a cost less than agreed upon. . please also remember that you and i agreed no more demands on my time after the last payment for the big transaction.
OR, you can decide that brad , tom , and whomever else you choose can screw with my work and they can oversee your audits . they are both aware and sensitive to the issue at hand. alan could be brought in but i would be extra careful having paul weiss given access to entire story.
_-On an unrelated note- you recently seemed shy to discuss certain things. , please be assured I make no judgement on any of your activities , whether or not i agree with them . not my role I am always on your side on the table. I hope your personal life quiets. you 've had a rough 15 months.

11:21 PM (13 hours ago)

to me
OBJ
Jeffrey,
I created applications one week ago at NDCAS (doctor of naturopathic medicine centralized application service) and VMCAS (veterinary medical college application service) ,working on my application material , requesting evaluations letters and etc.
On Tuesday I am going to the job interview, working on my resume today .
P.s.- I hope I will get finally the results from Chinese proficiency exam today /tomorrow.

On Sat, 7 Apr 2018 at 07:54, jeffrey E. <jeevacation@gmail.com> wrote:
no concrete progress. for a year. sorry, it cannot go on this way
Date: Wed, Jun 1, 2016 at 5:41 PM
Subject:
To: Melanie Spinella [redacted]
As i said yesterday, pointing out places where i think my friend might be taking unnecesarry risks has become tedious and trying. Structures that have been set up 2 years ago. were done so to give you protection and flexibility, NOT FOR ME< for YOU they required hiring stafff that could manage these complex entities. you told me over the past two years that as i set them up i should be responsible for their operation. That was never the deal , never. I have heard after -care etc for quite a while. in dec when you unilatierally decided to pay me much less than our agreed amount , we agreed NO MORE money discussions NO MORE after care. The silliness has reached its pinnacle when you suggest i am responsible for the lack of sophisticaiton and thoughtfulness of the 1031 transactions that NO one even told me about. asked my advice or gave me any notice at all before the fact. same as the structure for the CAlif house. I would remind you , though Heather is great, it was not she that modified the gagosian contract to give you the protection that resulted in your having no liablity, though you tell me she has done these things many times.
3. Remind me to talk to you about MR

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella [redacted]
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?
There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax, He complained for over a year , re his

direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .

. Asking me who to hire , estate attny tax people etc. :

I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,

a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note

; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that

I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge

If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with

you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

11:45 PM (13 hours ago)
to me
OBJ
T
im in paris now

Date: Sun, May 1, 2016 at 6:51 PM
Subject: Fwd: Valuation Discount
To: Melanie Spinella [redacted]
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
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I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan
Alan S. Halperin | Partner SEP Paul, Weiss, Rifkind, Wharton & Garrison LLP SEP 1285 Avenue of the Americas | New York, NY 10019-6064 SEP [redacted] (Direct Phone) | [redacted] (Direct Fax) SEP [redacted] | www.paulweiss.com

(10 hours ago)
to me
OBJ
Jeffrey
Pete informs the GIV is completed,.

Thx,

Larry
Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella [redacted]
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?

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a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note

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I expect as a friend you will understand that

I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge

If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

1On Apr 6, 2018, at 11:15 AM, Jeskewitz, Jeannine [redacted] wrote:
I'm in touch with Lesley and [redacted], we will work together on these reservations.
All my best,Jeannine
On Tue, Apr 3, 2018 at 5:43 PM, Lisa Emelia Svensson <[redacted]> wrote:

Air France has a strejk ... so French
Trying to rebook later in the week Will let you know

3 apr. 2018 kl. 16:29 skrev jeffrey E. <jeevacation@gmail.com>:

im in paris now

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella [redacted]

Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?

There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax, He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told

you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .

. Asking me who to hire , estate attny tax people etc. :

I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,

a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note

; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that

I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge

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thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

Date: Mon, Aug 29, 2016 at 1:41 PM
Subject: I know you have a lot on your mind.but..
To: Melanie Spinella [redacted]
sent to you JAN 29th 2016

you've agreed that
Your office is a multi billion dollar responsibility. your children will inherit it , in order to oversee their financial lives- I feel for you, truly ,but the facts are the facts, your ceo (Brad) has provided one bad document after another for over a year , no getting away from it, , bad cash flows no new IT, each time with " its gettting better " no in fact -! its not. - the excuse, that Brad is not the numbers guy, is ludicrous. of course he didnt actually prepare the statements. - no ceo would ,- but over and over he presented them to you and me , after , holding them back for his personal review multiple times and after multiple drafts. weeks of his editing, the consistant but "inexplicable "missing the obvious serious errors . (gaming) inaccuracies, (cashflow) and mistakes (tax returns). why, ?! the simple answer is that at best, he is a c minus, (note. I, like you ,also give points for effort.)- ! an elegant art partnership gone fallow. ??!!I and its core reason to exist. not used ? no docs for plane?, still ! why? no docs for decantings why? the docs for deal 1 received last night , " no docs at all for deal 2, the biggest " . why wasn't Tom brought in , after 4 times of my incessant reminders your admonition etc. the trading accounts ?
Barry Cohen is great. more like him please .
you asked , - I did my best trying to train your brad chosen people in the face of my telling you that they were never going to be more than c-minuses, thousands of emails thousands ? Brad at its head . you can't as a ceo, have an accountant give you multiple pages with the most important numbers missing altogether and not notice, you and I saw the errrors right away ,as did my very junior bookeeper after only a cursory glance. He told me he didnt know the details of his note? ! , my guess is that he wanted to pay less. no more than that, any other story is blather. its silly. Talk to richard yourself.
re your estate. Yes another Brad issue - your will, needs revision. the tenants in common structure I assume Alan has carefully walked you through. it is way overdue, needed and exciting. I won't list the more serious issues in an email but we can speak over the weekend.
How can I help? We agreed at the time when you hired Castrucci , that when you fired him, I would bear no responsibility

Date: Thu, May 12, 2016 at 6:17 AM
Subject: tight schedule lets try a set time to speak
To: Melanie Spinella [redacted]
Leon, you hired me to produce a work of art. it was not inexpensive. the value far exceeds any other piece in your collection.- by FAR . It took me 30 years to be able to craft such a work. I understand your desire to modifiy my work, in doing so you have brad telling me , just a bit more red., here let me show you, you yourself pick up a brush a add some strokes. you have joslin spray water on it to maintain it. I vigorously complain that joslin in ruining my work . . you describe me as zeus, i describe it as artist and a reaction to his work being ruined. however Im aware that you own the work and you have the right to paint over it. tear it up , put it in the closet in the basement . its yours.

I was told that Toms office is sending someone in ,or some people in, to review "some things." brad told me ,the partnership accounting. I know absolutely nothing more than that. though bringing in his team was my idea . Having them review things without even asking for my input , or let alone my direction ,is ridiculous. but.. I

guess you wanted to save money. ?
The audit has brought to the fore the lack of your office quality that i have been violently squawking about. ie . children playing with works of art. . It is inconceivable to me that John castrucci is still there , joslin part time, but relied on . joe error prone and brad a corporate bandleader talking about the office's finance team, accounting dept, and directing wendy to do things that are clearly not in your interest. (saving money again ?) its nuts!! . a still non-existent IT dept. impossible , it was the first thing on my list of things that were needed to be done. Still no trading accounts to speak of , though its prophylactic quality has been discussed over and over during the past three years . computers do not read Page Six . the women at the IRS do. ! you said your motivation in keeping this group of part timers was a consequence of the high cost of my artwork. . the unfortunate result was easily predictable. - now

If you want my and my atelier to continue, I will oversee the audits. take charge of the TRA BRH assignments and review 2012 amendment options!!(note :your redo of the estate fire drill has not progressed very far). Lots of paper needs to be collected and reviewed, At MY direction. the outside team will be brought in at my expense working for me and you. coming in for interviews and reviews, . sucession, technology, tax and compliance. investment reporting , , computerized timelines for filings etc. . household classifcations and reporting with a system of best practices.

My goal is clear - to end, not extend , our financial interactions. you will have a machine that works , it will not be complexto oversee , to create it, is some thing else . Unfortunatley for us both, the price for my works has not changed since day one. 40m per year, I m willing to discount it to 35 as I did give you a bad number when asked and should pay an embarassment fine. Im also aware, as you made perfectly clear . that you have already paid what you consider a great deal of money, for my work , but again its value exceeds anything else by far in your collection at a cost less than agreed upon. . please also remember that you and i agreed no more demands on my time after the last payment for the big transaction.

OR, you can decide that brad , tom , and whomever else you choose can screw with my work and they can oversee your audits . they are both aware and sensitive to the issue at hand. alan could be brought in but i would be extra careful having paul weiss given access to entire story.

_-On an unrelated note- you recently seemed shy to discuss certain things. , please be assured I make no judgement on any of your activities , whether or not i agree with them . not my role I am always on your side on the table. I hope your personal life quiets. you 've had a rough 15 months.

3. Remind me to talk to you about MR

Date: Mon, Sep 19, 2016 at 8:56 PM
Subject:
To: Melanie Spinella [redacted]

dec 2015

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.

As your friend and in order toturn the page. I will try to be constructive
The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain

the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re- do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them

in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.

From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens

drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

Date: Thu, Sep 29, 2016 at 11:47 AM
Subject: new info
To: Brad S Karp[redacted] Melanie Spinella [redacted]
brad, leon.
After I spoke to you both, I excused myself from a dinner with some heads of state to walk into the bathroom to make some calls re 8865. I wondered whether any group that we could assert had control had filed in the past years. I called Fenn and he told me- yes.???!! he said that on friday , for the first time he learned that AGM was not delinquent at all. and had filed. !! I asked why no one had ever told me or given me the purported justification for no filings in the past for the founders. and he said Well, sorry , it was discussed on fridays call. ? the call i was not on . not invited to ,the call wechsler didnt listen in and joslin didnt transmit , if it is true. Im also now told there is a note from Deloitte re 13 and 14 that says the founders DO NOT have to file. but fenn could not tell me who wrote it and said Deloitte says to ignore it. , that s why they are pushing now.

steps 1 8865 has many exemptions for filing. let see if we can find one . (an elegant position might be josh and agm if he is panicked and leave us out). The requirments are FACT specific , so without the facts we still have nothing. fenn said he has now put someone on it
2 leon , I suggest need to focus on 1040 , 2015. , we may even consider filing the minimum 8865 , and wait until we are sure of our specific requirements, and file an amendment for 15 as well as past. no harm no foul\

Date: Thu, Sep 29, 2016 at 12:34 PM
Subject:
To: Melanie Spinella [redacted]
Leon, I am on the verge of giving up. sorry. I cannot deal with the major incompetence of your family office. I have been vocal about change. you have made none. john castrucci, still involved etc. the bullshit corporate speak, of -our accounting dept , our bookeeping dept our finance dept, the comptroller . now gives me responses that --we have heard from Deloitte , I ask, who at Deloite?. -- dont know , the new team at Deloite says the old team was wrong ! what new team? what old team? -- dont know. . Pwc agrees who at

PWC , ? ? I ask ,- dont know. BDO is almost finished - who, ? dont know; . akin gump agrees. . Fenn? - not sure.
I have spoken to each of karp , pezner, fenn, brad. joslin, bodian. multiple times . like your office no one in charge with knowledge. so rudderless hysteria . silly beyond belief as this issue is a non event. other issues have been shunted aside that have real consequences. I know you are jet lagged. I am schedule tightly today , but can free myself for 15 minutes if you want . if so have melanie talk to lesley
--
Date: Monday, 3 October 2016
Subject:
To: Jeffrey Epstein <jeevacation@gmail.com>
alan told me you are going to meet tomorrow morning . He has asked me to review the presentation. I suggest you see for yourself . since you argued that he was partial architect of the big transaction. you will see. -- bad numbers. unclear assumptions. opaque presentation. no alternatives. no review of agreements. standardized schedules without names , handed out to the dentists. . NOT even up to date inputed numbers , why in the world would they present numbers 4 months old. ??!!/ it is only imputs. dividend assupmtions. a mix of silliness. (art given to museums is listed as cash out). discount rates of 13.05 %. what type of number. . 100k for illness expense and funeral, in a spread sheet of 5 billion dollars.? insurance numbers left out. says debra owns half the boat? taxes? all a waste of time
A clat probabaly makes sense. however who runs it, if interest rates change. did you give them the assunptions on growth?

Date: Sun, May 1, 2016 at 6:51 PM
Subject: Fwd: Valuation Discount
To: Melanie Spinella [redacted]
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5 and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan
Date: Wed, Nov 9, 2016 at 10:27 PM
Subject:
To: Melanie Spinella [redacted]
sorry, I can call on thurs or sit face to face fri afternoon. . I will be in ny until monday morning. decisions-questions good news . I have a really elegant solution for most of the following, 1 gift tax. cash or in kind . 2 . 1031. 3 fire drill brh tra etc. 4 . xxxx 5. 8865 s.

tax planing running out of time. . 7 restructure office . barry? brad told me he thought you had acknowledged high value this year. gift tax audit etc. , . April, Oct. . returns. manage joslin , who is still running your tax dept .

you and I need not rehash old postures, its tedious - I would ask that you tell me if you intend to pay for the work that was done, and for the work you expect to be done, . thanks

Date: Tue, Nov 15, 2016 at 12:13 PM
Subject: Fwd:
To: Melanie Spinella[redacted]
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?

There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax, He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .

. Asking me who to hire , estate attny tax people etc. :

I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.

My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.

That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,

a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock

sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note
; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that
I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge
If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

Date: Tue, Nov 29, 2016 at 1:27 AM
Subject: so there is no misunderstanding
To: Melanie Spinella [redacted]
I have told the brads and barry,- I am done. its not a negotiation , out !! - fyi given my carlyn joslin castrucci, admonishments,- though my involvement in those - in one instance only gave a name - in another only given an eileen dictated choice btween two 250k preparers. and for castrucci, I actually sent emails that i take no responsiblity for his being hired. - however you felt strongly that I should be saddled with their outcomes .even with brad wechsler , i again said two months in, Leon, he doesnt get it. I tell you this so that you will understand that I will not interview, recommend or vet any new hire.
A story - In 1993 trump and I had a friend that kept telling his pilots how to fly , and when to fly , he couldnt help himself from hiring morons as co pilots, and maintenance people based on cheapest rates. Donald and I tried and tried to talk some sense into him, to no avail. Donald and I were in aspen, sitting at little nells. when the friends plane crashed into the side of aspen mountain , klliing him and all on board,- Trump looked at me and said without a blink , I guess NOW he wishes he would have listened to us.- a metaphor for your office. . . had we not waited to the very last hour having had a six month window and tens of unasnwered text and emails re decisions needed including the 1031. you would have saved way more than you often feel obliged to argue about. . silly but i reallize you are stressed.
Barry will need to sit with brad for months, to absorb all the co's , structures. cash flow, financial statments etc. I will present barry my thoughts on the overall redo , it will be the exact same email that i presented to you and brad two years.ago . accurate numbers first. and foremost. . (last week gaming report stil funky). IT etc I pointed out some of the more glaring errors to barry to give him a flavor of what is to come.
Tuesday if you like we should discuss Giacometti , and pesner . difficult to finesse him if they are filing documents that you won't . these ridiculous conversations with tons of people on the phone , removes any claim you might have to not be considered a WILLFUL NON-FILER . (after youve been told by attnys

and pwc that you should file in writing , you have NO choice) .. worst possible result - including serious penalties up the kazoo.

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella <[redacted]
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.

In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers, home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.

I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.

Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was

hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .

We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Tue, Mar 21, 2017 at 6:58 PM
Subject: Fwd: request for docs - AAP
To: Richard Kahn <[redacted]>, Darren Indyke <[redacted]>
not for now. but maybe later ,
---------- Forwarded message ----------
From: Ada Clapp <[redacted]

Date: Fri, Mar 17, 2017 at 10:45 AM
Subject: RE: request for docs - AAP
To: "Barry J. Cohen" [redacted], "jeffrey E." <jeevacation@gmail.com>
Cc: Brad Wechsler [redacted]
Attached are:

1. Executed Version of AAP
2. Most Current Draft of AAP
3. Redline of 1 against 2
4. Summary of AAP from Vanessa Eng

-----Original Message-----
From: Barry J. Cohen [mailto [redacted]
Sent: Friday, March 17, 2017 8:07 AM
To: jeffrey E. <jeevacation@gmail.com>
Cc: Brad Wechsler [redacted] Melanie Spinella [redacted]; Ada Clapp [redacted]
Subject: request for docs
I will organize. Copying Ada who has a lot of this.
Sent from my iPhone
On Mar 17, 2017, at 7:25 AM, jeffrey E. <jeevacation@gmail.com<mailto:jeevacation@gmail.com>> wrote:

can you send me latest bank art loan docs. BRH agreement . TRA agreement , agreement amongst shareholders. . , org chart for phaidon , art space and regan arts. . . , ownership only, . - list of invetsments , ownership of l.a. house.structure, / list of art by highest gain. . -

Date: Tue, Dec 29, 2015 at 7:26 AM
Subject: Fwd: leon DO NOT SEND, hand deliver.
To: Jeffrey Epstein <jeevacation@gmail.com>

Transaction complete !
. this - in spite of your collection of Elysium misfits. !!!
With Brad out of the office and unable to run his usual interference , the level of his utter incompetence was brought front and center, he may be a step up from Eileen, but if he is , then it is not certainly not by much, . Though you and I have spent many many hours discussing the importance of details and mechanics. I was not shown one document re phaidon,- not one.. Brad wanted to keep it private between he and his so called " advisors " however as he was out of the office during the most important transaction of the year, I did get to spend time with joslin Joe and john, - the situation in your office is wholly ludicrous - to summarize - the list I provided to Brad last December - things I thought were a priority to get done after consulting with your office still remains virtually undone.

IT, still desperately needed- reporting flawed cumbersome and inaccurate . all done by hand as one -off exercises , - airplane: re structure, (my only suggested priority in june) is really ,no further ahead, ,consultants up the kazoo but nothing at all done.(the office was told that i cannot even see the proposals received without brads specific authorization) - brad has no idea even as to what questions to ask. he knows little of finance, is run roughshod over by almost everyone in the office. he is a little man , using your power, to appear larger . Eileen was self aware enough to know she was over her head , that is a huge difference. bad info is rampant ie 3 million in deductions Im told are taken for art space but on closer examination it turns out they cannot be used at all. (ZERO benefit) though you will be told yes they were deducted on the return they said that is the question they get asked ! " were they deducted " not -" is there a benefit " !! I asked for the balance sheet and P and L for Regan arts , a basic first step in order to check your financials. "sorry we never got one?" though 9.8 million invested, no p&l, nothing , a construction project run amok , no budget, the coo fired after only 3 months. , no clue . I can add that artspace financials are also a total mess.
As your friend and in order toturn the page. I will try to be constructive

The following is a list of things I think would be in your interest to get done asap .but definitely not by me .

i suggest you form new grats. , hire a high level tax partner. use your trading accounts as they remain the paramount requirement 16 months after i emailed to you their importance. , I suggest you consider having the 49percent of phaidon merged into artspance and have Richard buy artspace. re-do bank loans. no need to pay interest at higher rates on boat or plane. . as Richard is now no longer trustee. re- do will, make suydam executor , with Barry, and john as back up. pay 1 million a year for executor role. get rid of Judy Black trust, deal with gifts and their tax returns, . review amounts to kids at fixed ages. put more protections in for Alex and Victoria. , distribute some money to kids let them make decisions. , decide art division with children in attendance . have fire drill done on estate. fill out estate returns as if you and Debra died today, choose advisers - rick bronstein said the only 1040 he ever filled out was his own. (this is brads chosen advisor??!) Halperin has a conflict that should be addressed., Debra should enter a tenants in common agreement with kids. you have airplane consultants tax consultants it consultants. plane operation consultant. . boat consultants. architects, lighting , art, legal, . foundation , deal with TRA , BRH , rationalize investments. cash flow. reporting, gaming disclosures. foreign, gift. . prepare tax projections for 15 and 16, . deal with neg basis (tufts gain, debt financed. art partnership, pledges. sell stock , art, deal with phaidon debt. athene,? income , capital , foreign , exit, corporate, insurance regs, out and inbound issues, basis, appropriate discount rates. ? terminations. control. , qualified dividends. corporate tolls, inversion rules. , grat issues, short swing and other sec disclosures, Rothshcild bank, 150 b they have a distribution network with no products , private bank Rockefeller Rothschild. financial service. deal with UK visa issue sooner rather than later. we can talk about Rowen request re Athene , 2 billion in taxes on transaction. ?!

the facts as i see them
in June and then again Sept, we both agreed to a 50% of phaidon payout., then after weeks of thinking about the issue (which I fully understand) . the payout was unilaterally changed . 5m woudl be reserved for the future ? . and out of the remaining 15m ,? i would receive only 5. (note : I'm confident that both the debt , and the artspace investment will also lead to a write off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies that I devise are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay ,.
From day zero a 50 - 60 million price was attached as the fair price of the transaction just completed . though this amount was already substantially less thanour agreed and negotiated formula. - I was never told that this was out of range. in fact, alternative methods of payment . plane -in-kind etc, were discussed (ie keeping the 30m portion of fee outstanding till March) ,I provided as requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was not forthcoming) in order to make my many corrections . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one-,not -one time in three years has he ever proposed a unique idea. (including the new tenant in common idea,) and lets say he made a contribution to the plan andeven that it was 50 %. though no one could posit such a large amount unless they were wearing a brightly colored clown suit. , the price of doing the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then after all was laid out for the group I was told that after a number of conversations with brad karp that only 20m would be paid , (and even that was more than originally contemplated) for both transactions . I feel It was remarkably unfair. Did brad even know of our prior agreement.? I called him and he said he was never told.?, I would ask that you I and Brad karp sit together if you think it would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the price was known up front. , the detailed step by step plan was followed and overseen by me, the price that had been requested before the transaction was begun, and had lready heavily discounted, out of friendship, from our agreement . I believe the decision re paying only 20 m has frankly

left me felling quite uneasy.

since you asked since last nov. i found 11 million dollars in dormant accounts. 4 million dollars in eileens drawer. . went through cash flows for phaidon shwoing that john murphy is not an accountant. redid your gagosian contract , . organized structure in case of divorce. set up gift trust. stopped ada from including multiple times things not in your interest. dealt with bad sales tax use tax income tax . created 8 millino in deductions ,500k in mistakes , found bank of scotland fbar problems, . . reorg bad art purchases , funds taken, , charibale decustions , helped with fincnacil sttment gamoing commions fling. . boat deductions, rescued stock from grats. . may 1 after months of brad not finding anyone i sent an email saying you would have to pay more. . on april 15. I sent an email detailing payments owed if i could figure out the basis issue, please see attached, .

questions you might ask your team ask them to provide a balance sheet or p&l for REgan arts. . doesnt exist ask . either wechsler or haperin to tell you what brh is, or how the tra works. . . ? as bronstein to tell you why the proposed phaidon transaction DOES not work. . as them to give you a plan for the plane. ? ask them to show you the cash mgmt for over 100 million dollars. . ask them to show you the IT system progress after one year. . the approval process for payables. . the cash flow projections? assumptions? ask for a comparative review of investments. ask haperin to describle to you in any detail BRH , the major asset of his two biggest clients. tax basis, disposiotion in the estate. . etc. ask brad to show you the liquidation of the inteveing art space cos? .

Last year you asked , for my help I told you I preferred not as we would be better off having no financial intereactions. the risk was not worth it. You told me that as my friend i had to do it I agreed., here we are in what I find to be an awkward situation. the transactions that i decvised were used , our agreement was ignored. and im not sure how to respond.

Date: Tue, Oct 27, 2015 at 6:35 AM
Subject: Detailed constructive list.
To: Melanie Spinella [redacted]
Cc: Brad Wechsler [redacted]
Deciisions needed asap 1 phaidon. topco etc. . (cash needs) many wires needed !! 2 new trustee or not. - new decantings 3 art in art partnership.??! .overdue ?! 4 grats? window - 5 art space. .6 regan arts. .7 plane simplify re strucuture re finance. re purpose . 8 .boat restrucutre , sister, 9 re fresh estate plan. to consider modifications Alex Victoria equal does not mean same. 10. tra review , sale. , 11 brh, doc review, 12. sale of stock or art ? tax, rent sale 13 . gifts of art. 14. charity current and future pledges , gifts, 15 cash flow. . 16 . new IT and new personnel. 17. operational re-do (bill pay etc) . 18 debra and children ? current and future involvement . notifications etc. . new dynasty trust ? 19. tax plan and dislosures gaming. foreign apollo and phaidon related . 20. investments rationalize incl trading accouints . 21. bank loans . rates ? ? terms etc. consolidate. plane boat houses. disclosures? 22 . consolidate and review and reduce the number of all bank accounts and legal entities. decanting liquidating etc. . 23 all outside consultants? valuations etc. 24 review legal bills carefullly. 25. third party responsibilty Bens house , alex films . etc.

Date: Tue, Nov 3, 2015 at 10:45 PM
Subject:
To: Melanie Spinella [redacted]
okay, its time for you to decide how you would like to move forward. (fyi get your money from the 1031 . the screw up is only one of many,) If you decide to move foward on decanting. phaidon, note basis estate update , each requires many carefully orchestrated detailed steps. and precision . there are hundreds of millions in saving if done correctly and a huge mess if not. If you want me and my colleagues to do it , oversee it paper it and guide it, you should tell me. It is a big undertaking . If not , ok .. Brad and your crew

can do it. I will have no real further involvement apart from confirming the outcome of my proposed structure, I will not risk the admonition of- they thought you said, they thought you meant, they understood it to be. but they said you said, (i e ,I asked at our meeting that accounting be done properly for bens house , what came back was ada thought that I meant that we needed to go back to the 97 trust and give him a full third party accounting of where his money had gone??!! I kid you not). I dont think brad should talk to jane heller without a fully fleshed out plan in place and even then it should be you.

Date: Mon, Nov 30, 2015 at 11:21 AM
Subject: agenda
To: Melanie Spinella [redacted]
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Fri, Dec 4, 2015 at 8:07 AM
Subject: Fwd: moving forward
To: Melanie Spinella [redacted]
I had forgotten that Alan was actually at the table when i explained my note deal to you. it was at the end of the meeting described below. . as you will recall , not once , not even a peep did alan suggest contemporaneously his hand in the crafting, in fact brad said it was an idea. that HE brad, HAD HAD , from the begiining . my emails between alan and I that you can read , further confirm authorship. Im sure you recall the obnoxious tooting when alan said he agreed with my plan. .

Date: Mon, Nov 2, 2015 at 10:03 PM
Subject: moving forward
To: Melanie Spinella [redacted]
I have mixed emotions about what transpired today. really, You saw first hand in nauseating detail what i have been saying to you for quite a while now. Joslins answers were totally incomprehensible. the charts he prepared unreadable. Brads defensive posture was at a minum very surprising . He and I have recently gotten along quite well , I thought . Neither Joslin or Brad understood a 180 million dollar number . no cash flow after weeks of requesting? odd. when you suggested that heathers behavior was emblematic of a sloppy office , brad said lets not talk about emblems??! bill pay , admittedly no change for the year. . plane not done. though it was the only thing i suggested doing first in july . . I sent you a list of 10 consultantts. brad said three, . i didnt want to push it. I was shocked that brad was opining on things he knows little or nothing about. tax issues. 1031. neg basis , note payoffs (the same idea he said he had had from the beggining??!!) . answers re LBF holdings that can be corrected (they cant) . valuations that have never been read. . When we met in your lobby he seems surprised that i was there. I dont know if he felt somewhat sandbagged. . . the savings on the note payoff is aprrox 33 % of 1.8 billion. real money if you do phaidon which i see no reason not to . if later josh and ben want to buy it back with you or without you they can. i will walk you through the structure one on one. . the losses will offeset the calder gain as well as apollo gain.
Im aware that seeing what you saw frustrated you. I felt badly for you.

You wanted a contingent deal. real value. etc. I will not of course hold you to your deal . . its silly. its not how i work or a reflection of our friendship. my proposal is as follows. I want away from your buisiness , but at the same time leaving you in good shape. I think you should pay the 25m that you did not for this year. for next year its the same 40 m as always, paid 20 in jan and 20 in july, and then we are done. I will give you advice and counsel but new people will be running your operating machine. I will oversee all the work

that needs to be done you and I will hire new people , and it will be self running. (it was may in my house when you told brad it had been 5 months and you were getting fed up) I will set up a parallel . office , somenoe like wendy dolman or her quality is paramount. two accountants two bookeepers and two office admins. . alan and zoe will handle trusts and grats. heatehr diana george will be incolved in art partnership. if you want brad, analysts etc. and kids to do investments I have little to add in that regard ,except to be able to account for things properly. I suggest that the kids must have skin in any deal.
Alternatively , we can continue to focus on fun and let someone else do the things that you want done. and you and I can kibbitz about it all. structures outcomes risk, museums. charity, (joslins answer by the way was I had asked how much charity was leon planining to give this year , (the 2 m) he didnt include your foundation or the payment to me, or from debra and you??!!

Date: Mon, Nov 30, 2015 at 11:21 AM
Subject: agenda
To: Melanie Spinella [redacted]
1 fees, amount and to what entities when and responsiblitis. 2. gagosian idea to save a minimum of 10 mill and maybe more. 3. i can walk you through carlyns screw up, 50 % would have made little difference and maybe made it worse . 4. we should have an all hands meeting with your family to talk about art distribution on death. . 5. phaidon, decantings (already firmly in progress) loans. (alan) pent. (with follow up) all part of same elegant transaction, 6 asymetric risk worth at least 50- 60 no matter how you calculate. I can explain. 7 lets get the money issue out of the way once and for all. I have my team set to start.

Date: Fri, Feb 20, 2015 at 5:52 AM
Subject:
To: Melanie Spinella [redacted]

1) pg 1 A " unequal shares" . pg 23 "removal of trustees " absolute. dont be confused with abiltiy to set up seperate trusts, , 2) I am reachable this afternoon in europe. on cell. 3. on another note . -our financial agreement ended months ago . seperate from the art partnership (which i was told yesterday to my amazement is still not funded) . i am obligated to complete ? the time i have dedicated since oct/ dec has been spent mainly as your friend. tom, brad though i am fully cognizant of my responsiblities. I will try to help find people. I am not good at human resources. howevr If I don;t think they are good enough for you. I will continue to say so , and you obviously decide. but I will reiterrate even in the face of your "nobody is good enough argument." keeping foremost in my mind that you and I have only beeen shown a very tiny handful of people. 4. I find the friction over fees , counterproductive. in an attempt to avoid it I had suggested a multi year deal early on. you rejected it. I then suggested, and urged you to have an option at a fixed fee , you also rejected that .you wanted the fee payment only at the end I argued but ,conceded. I suggested a structure that tom didn't like. you rejected it . 5 I suggest you make a fair proposal.- that i can either accept or reject. some payment up front this time is a requirement. I am willing to modify any outstanding obligations. - there are creative ways to assure you of your desired characterization of those payments. 6 you should open accts at Deutsh . and goldman. I am told that eilleen has set up over one hundred bank acccts for you???!!. few relevant 7 you should immediatly demand a list of all her acct authorites , exec poistions . director etc. bank authorizsations. etc. talk later or over the weekend if you like

Date: Tue, Jan 5, 2016 at 9:32 PM
Subject:
To: Jeffrey Epstein <jeevacation@gmail.com>
Mark was here this morning , the proposed transactions are extremely complex . and would take a great deal of detailed time. I do not know how, and if ,to move forward - our last transaction. a transaction which you saved 600 million in tax. even if 20 years away , (i hope longer) even discounted is a 300 million savings . for that you ignored our agreements , verbal written and emailed -and decided that it was only

worth 8 million dollars. (assuming phaidon srichard happens. 24 m savings not including artspace and debt benefits certain to come later) FYI the phaidon transaction cannot happen as currently comtemplated IT will not work . NOT

When we had our meeting in your home in Bedford. You asked me for my help. I told you multiple times that i thought it was a very bad idea, in that I preferred to have no financial interactions. I dont have many friends and didnt want money in any way to interfere with our unique relationship. Reminder , For five years you had the kind but goofy Eileen Alexandersson as the sole manager of your accounting , legal, investments. reporting, trusts etc. When I first told you in no uncertain terms that I firmly believed she was incompetent you admonished me for " speaking out of both sides of my mouth " . With regard Brad Wechsler , there has never been a " both sides. ". I have consistantly maintained since day one that he was highly unsuited for the job. When you initially asked me to help convince him to take the role , promising him a position to manage mirage investments I sent you a note saying that instead of hiring him you should pay up and get first class people. I have reiterated the same message for over a year now. . Brad , not me ,was tasked with hiring new people , according to his org chart.(nauseating) and as you wanted him to take ownership of the staff,he conducted many interviews alone. . you may recall that as late as may, you told him in my presence that though six months had passed he had not hired anyone. since then I have rectified errors in sales tax, use tax, income tax, fbar reporting, 1031 reporting, 8 million of deductions missed errors of millions on the returns. ,(april) Oversight on new grats- first at 22 and then at 19 that were done without my consultation and needed to be resolved soley as a result of my last minute intervention. . 600 million in after tax savings was just accomplished. though you left the 30 million outstanding that I had said should only be done" if" that was my additional fee. not used for non biz purposes and not art.

in June and then again Sept, we both agreed to a 50% of phaidon payout first projected at 20 . but less when artspace and debt taken out, - then only after weeks, when you delayed any detailed discussion of money wanting to give the issue a thoughtful response (which I fully understand) . you unilaterally changed our agreement. . 5m would be reserved for the future ? . and out of the remaining 15m ,? i would receive only a third. (note : I'm confident that both the debt , and the art space investment will also lead to a write- off of another 30 m. plus) In my dining room ,you were surprised when I said that i require most people to pay their advisory fee up front so that I am assured that I will be properly compensated for my work when strategies are implemented . you may recall that you appeared offended and said " are you suggesting that i would go back on my word " I said no , of course not ! you are my closest of friends ,but my experience is that when amounts get large, people tend to get unhappy when it actually comes time for them to pay.

I include below the email i sent to you on April 15, the day i was examining your returns It laid out my understanding of the compensation agreed for a transaction of the magnitude to the penny of the one just completed.ie 600m When it appeared that the transcation would and could go foward I was the first to point out that our agreement would cost you too much money, therefore

From day one I proposed to discount our agreement to a 50 - 60 million range. An extremely fair price for all the transactions just completed . including Phaidon. - I was never told that this was out of range. in fact, alternative methods of payment . ie my plane, or an -in-kind payment were discussed (ie including keeping the 30m portion of the fee outstanding till March) ,I provided , only because you specifically requested a detailed step by step execution plan and reviewed all documents that i was given access to. (Phaidon was never forthcoming) in order to make my many corrections . (as i said more needed on phaidon) . I was then told that Alans involvement warranted a discount . Even in the best of light , though it is beyond question that not one time in the three years of his retainer has he ever proposed a unique idea. (including any way to deal with the use issue on debras death ,or even the most basic review of your largest asset by far , the BRH agreement.) O.K. - lets say he made a contribution to the plan and stretch reality beyond the pale and say it was 50 %. though no one could posit such a large amount unless they were wearing a clown suit. , the payment and our formula of 37 percent associated with the deal was known . It had both sent in writing and spoken about on the phone numerous times , a detailed execution plan was provided . then and only then, after the entire transaction was laid out for the group to follow You told me that after a number of conversations with brad karp that a total of only 20m would be paid , (and even that was more than you originally contemplated) for both transactions . Leon I feel It was remarkably unfair. Did brad even knew of our prior agreements.? ?, I would ask that you I and Brad karp sit together if you think it

would be helpful. . I would like to send him this email, with your consent of course. If the transactions were never consummated , i would not be owed a dime, however , the expected fee was known up front. , the detailed step by step plan was followed and overseen by me, the amount that I had requested before the transaction had even begun, had already been heavily discounted, out of friendship, . I believe the decision re only paying 20 m has frankly , left me felling quite uneasy. and colors the view about the Athene or Rothschild transaction.

Date: Sun, Mar 20, 2016 at 11:17 PM
Subject:
To: Melanie Spinella [redacted]
glad to see you are personally on the mend - as well as the fence. -- As you know i dread money discussions with you-- however -we should address the issue of what you would like to do moving forward. re-do family office, accounting trusts , estate and apollo agreements . Along with your " payment " last year we agreed . no further obligations on each side. yes, i continued to moan. I realize that though I ve done quite a lot this year already , it is not your responsibility. . As you often like to remind me- you've paid a great deal of money to date. that being said - If you want my involvement moving foward, I suggest you pay my regular l fee of 40 m . 20 now . 20 on completion or as per the invoice issues at the end of last year pay 30 all at once. -
To help out . im keenly aware of your current cash position. so I will consider an in-kind payment - real estate (Miami), ,art , financing of my new plane (allows you to spread over years or of course the preferred cash. Get rid of Castrucci,it is over a year since the same story of findign the right guy at the top. you entire accounting needs to be re done. , office downsized, reporting re done. meetings to recitify, categlorize , the various docs re appollo , rowen , suydam, alan etc. Brad can direct investment guys, (hopefully) my people will be in your office for a few months . reorganizing IF you decide not to pay I fully understand, as I m sure you will re my no longer spending any serious time on these things.
Of course re any non financial issues , I am always there for you and will continue to be the best friend I can be .
Steve jobs said that everyday he woke up , and asked himself , if he knew he was going to die tomorow , would he do the same thing that he had planned for the day- he wanted to check that he was doing things that he really wanted to. after three days of getting back an answer of no, he would change what he was going to do. . he also did not believe in LONG term plans. I dont think either one of us will figure out what we want to do long term so my thinking is that we should try to have fun everyday, and welcome serendipity.
I think another trust and estate lawyer should be brought in to deal with the issues of how not to allow your family to get screwed by your partners on death . Alan, for years told me that paul weiss had drawn the docs so no issue but when recently pushed by my new fire drill he asked akin to draft .?! PLease ask brad about why he keeps talking about flow . I dont know what he means, its so silly . . this is only about money control and protection .
I am leaving monday night now. free to speak in the afternoon

Date: Tue, Apr 12, 2016 at 11:49 AM
Subject:
To: Melanie Spinella [redacted]
use tax questions. ? california question state returns? as you know wendy did not play a role here. . her involvment moving foward would help alot. . sign your gift tax return today if possible . I will be finished tomorw with this year. crazy on april 13th. !! . last minute to say the least. . brad told you the tra can be separated with approvals. which should be simple. . alan alwys just says no , . unless he is asked , well what if we amend what is there. . moving foward , i ask you to decide if you want me and my team involved or not. . I want to be weaned. I agree the past , apart from phaidon and artspace. this year of course is done. . for me to allow bad reporting to negaitvely impact you, by keeping joslin, would be irresponsible on my part. . letting him do harm, or stopping him and having to listen to his leaving is my fault. is awkward. . I will call at 3

Date: Tue, Feb 9, 2016 at 7:56 PM
Subject: Fwd:
To: Melanie Spinella [redacted]

this was sent four months ago, nothing has changed
sent oct 15. before big transaction.
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .

Date: Tue, Nov 15, 2016 at 6:13 AM
Subject: Fwd:
To: Melanie Spinella [redacted]
Leon, Congragulations on biting the bullet. at least 18 months late , but I m encouraged and glad for you. When you interviewed Brad two years ago you asked that i not tell him what a disaster lay before him. what would you like me to tell Barry?
There is a HUGE amount of work to be done in the next 9 -12 months. mostly the exact same work that i outlined in my email of 2 years ago. now complicated by years of mess on top. (you can send it again if you like) . Brad wechsler was never up to the task . sorry, I realize I have been saying the very same thing for a long time. he was a not a step up from Eileen but a step sideways. in the beginning there was Eileen and Tom and Ralph Lerner. all your hand picks. then brad. john, Joe. . joslin was chosen from a pool of 2 people. each that would be limited by a salary of 250k. (yes i personally augmented his comp in order to get him) I did say hire both Lisa to do the bookkeeping and joslin tax, He complained for over a year , re his direction by eileen and ada , and then brad. His breakdown was not a surprise after months and moths of warnings. Though disabled, he ran your office this year. with john and joe. He ran amok, and as i told you he rarely failed to remind me in our conversations that you told him that he works for you and not for me and that brad needs to pays him .
. Asking me who to hire , estate attny tax people etc. :
I have taken heat for years over the fact that i gave you no more than carlyns name, . no follow up questions no interactions , not even one single question asked of me re her work. (that was Eileen _) but somehow carlyns fuck up was my doing. . when i told you that i thought Eileen wasn't up to the task, you bellowed that i was talking out of both sides of my mouth. . You told me this year , that by trying to protect you from crazy joslin, I had in essence fired him and it was my responsibility to do his work. it then turns out that he didn't consider himself fired at all he just received less money. and continued to make a really dangerous mess. . Joshn castrucci, in your eyes , was also my doing , though email after email said , I take no responsibility for him,and iYOU SHOULD NOT HIRE HIM .!!! , , your response was that was my opinion was only because i didn't trust him. then to add insult to injury last jan you told me he was gone. however he too is still there, and a waste of money and space.
My time is complicated by Donald's potentially eviscerating any reason for anyone to use the foreign funds repatriation plan that i had put together. . however as you are aware I have some decisions to make re my time allocation in the next year or two. so at least for a few weeks I am unable to commit much time and make any future plans to guide you in the redoing of your procrastination produced mess.
That being said , the tasks at hand are the following.

You have a bomb of colored string that your retarded children have formed , It has to be very carefully unwound , even the substitution of Barry for your next trustee, needs a careful focus on procedure.s It would be much preferable if Wechsler was not his replacement. do you have any person you trust ??! . I am concerned re brad taking barrys place re XXXX. In the beginning Barry will need to find and learn ACCURATE . org charts. books , balance sheets . trust valuations. are all a part. Barry will need 2 months to just get his arm around what is there , this is before any needed modifications.,
a way overdue re- fresh of your estate plan . . clats , trust. partnerships. grats. llcs. bank accounts , filing requirements. etc. the long awaited review of the brh tra and shareholders agreement to see how they fit into new plan. . " XXXXX" planning. art partnership engagement .. , airplane re-do. , buying another. . ? boat sale , Miami sale. . TRADING ACCOUNTS. . three years over due. . an accounting system. fire john .. joslin stays for a year. or so. so does tom and . except for heather everyone should be replaced with new. . Sell Artspace and shut down regan arts. . rationalize. cash flow reporting. cash mgmt. stock sales. sec irs. gaming. foreign reporting. the 8865 mess will take months to review now . . you CANNOT file unreviewed audited documents. . CANNOT!!! this will be very detailed work. . a self inflicted wound - all avoidable if professionals had been in place to limit . or contain it. . . you will need 3 new hires .a s there is no one in your office that is truly an A player. I have great hope in Barry as you know. He will need to be trained. note
; One year is my guesstimate After 4 years of telling you , that you could do better than Halperin, : im glad that you now are willing to follow barrys advice . I take no offense , in fact I take comfort in the fact that after only one conversation with Barry you are now convinced to make that change . will take a year or more.

I expect as a friend you will understand that
I will no longer , not even for one day , work on your affairs . without the compensation that is long overdue. . your unilateral idea of after care , not imposed on any other professional , except me, not paul weiss ,(caesars alone , a direct screw up on their part) tom, akin, , no one. needs to end. . you and I had previously agreed no more of that , and this after you decided not to pay me per our agreement. to be fair I can not say im surprised as you have email after email , stating that , if you save a great deal of money, you wont want to pay , so limit it to 40m per year. - water under the bridge
If I can find the time to work , on your project , which is not by any means certain as I have said , I hope you understand that it now will have to be under my standard terms and conditions. and well documented so as to avoid any more of the he said she said. I never want to have any more uncomfortable money moments with you , I find it very distasteful. . so to be clear , my terms are as follows . I will only work for the usual 40 million per year. It needs to be paid, 25 million upon signing an agreement . 5 million every 2 months thereafter for 6 months ie march may june . this can begin if i am able in January. I will immediately stop work , if the payment is not received. If you want me to work this year until Jan 15 , it will be 10 million. paid upfront. after one year you will be left with a new estate plan a running office. staffed with professionals overseen by Barry. (hallelujah) a tax plan . and an investment that returns more than any painting you could possible own. . no agreement - no work. however - I of course will talk to Barry for the hour that i promised , and take your guidance as to what I should say.

her the last two places. ?

To: Melanie Spinella [redacted]
Leon please read the attached proposed response to the IRS , see if you can understand it !!!. Ive asked for a re-do. and given prelimiary directions to Alan to have it edited over the weekend
. If you are quarterbacking ,ok with me. just please let everyone know. you must deal with the outrageous incompetence in your family office .. Alans words " but I was told that.. , but I was told by the office (sic) that ... , BUT i was told by joslin,. , but I was told by . " why is leon blaming me for .." . I ve have always given you my best advice, If you reflect on your financial life , you have been kept safe , had remarkable results and no disasters. I have repeatedly urged you to get rid of the people in your office. , you have repeatedly chosen to ignore my advice , you told me last week that the emotional reason was in order to be weaned off my group and not have to pay my high fees. (though ignoring the benefit of between 1.5

and 2b to the better.) . and no explosions. You have email after email ,where i remind you that I am not your bookkeeper or accountant (in brads corporate speak his" finance dept ??!!) that it should be redone .I have reviewed a multitude of the silly reports given to you and have pointed out the continued numerous inaccuracies . your question " so what if the numbers are off , so what if the categories are off. whats the big deal??. I suggest you de risk you finances and make the tough decisions necessary - pay the right amounts (high) to get the work done properly or , you are , Im afraid, certain to get an unhappy answer.. tom will be back from vacation. this week.

---------- Forwarded message ----------
From: Halperin, Alan S [redacted]
Date: Thu, Apr 28, 2016 at 5:16 PM
Subject: Valuation Discount
To: "jeffrey E." <jeevacation@gmail.com>
I am attaching a draft response from Empire Valuation as to why it arrived at a valuation discount on the low end. Let's discuss the response and next steps. Thanks. Alan
Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella <[redacted]

Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.
In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers,
home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.
I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.

ONE YEAR AGO
Feb 17 2014 i wrote :

With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with

little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)

With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you

required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine .
We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Tue, Feb 24, 2015 at 8:20 AM
Subject:
To: Melanie Spinella [redacted]
Leon,
Yesterday , I again spent hours upon hours of my time with your office. ,(speak to brad to get flavor) and you and i will discuss the results in gory gruesome detail on Friday. it mirrored many other weeks spent doing the things that I don;t have the time to do.
In order to keep things in perspective, maybe reviewing an analogy I have used before with you, might be helpful. You and your family are a 6 billion dollar corp. with an income between 250 -500 million dollars per year. It contains a few operating biz's , a large wide array of existing investments, in various categories , a desire to enter into others. A panoply of loans, notes. purchases, wide range of all types of taxes. , planes. boats homes. . trusts ,grats. a crazy number of bank accts. (with no oversight) . law firms, acct firms, 800 page tax returns, foreign firms. art consultants. construction consultants bill payers,
home mgmt.,vast multitude of llc's , including foreign, and with all that you only have a combined overhead of less that 3 million dollars.
I have previously sent you the very same note that i have enclosed again below ,this time with highlights . I wrote it to you over a year ago. As my acute disability (selective memory) seems to have been raised as one of your concerns , as a rule I try to memorialize things in writing in an attempt to lay out issues that I fear may later turn out to be a problem. ie what i would and wouldn't do , - my responsibilities. etc and those things that are not. below you will find details of things that I thought needed to be done, so that you wouldn't find yourself in the very place where you currently find yourself. however ,you chose to defer many of my suggestions- see below -,until only weeks ago. ! you chose to defer the jpm acct. the art partnership on and on - into this year. and though the 60- 50 40 timber emails all carried with it a clear warning that you needed to do something re personnel if it were to stabilize,- you chose to wait.
ONE YEAR AGO
Feb 17 2014 i wrote :
With regard the more pressing issue I am uncertain of just how to proceed. I am torn, as my very strong inclination is not to be involved at all . It is extremely time consuming, delicate, fraught with many pitfall many that will make you very upset and a major pain in the ass. I wrote you months ago that the quality of the people involved need to be upgraded. (lucky for me these last issues arose way before the beginning of my involvement) I am also aware however of my overarching friendship obligations of ok, -given all the complexities who else can do it? problem.
Your family office needs a daddy. children with good intentions are running around , sniping , nitpicking with little direction. As a stopgap measure I am suggesting , we put in Larry Delson to take charge Everyone would report to him. Eileen included. He would however work for me. this is not, by a long shot my first choice as I prefer only being responsible and standing behind my own personal work (ie the word DONE will no longer be transmitted to reflect status stated by others)
With no commitment on my part whatsoever, to do it. So far as I have failed in my attempt in trying to think through the problem creatively . My organizations handling of the more complex issues I believe you

might find very costly, very ! (however many structures available some risk sharing, maybe risk caps ,etc) but would require my teams doing the work , not yours. Ada should be only a trust, grat administrator. not sure what role you prefer for Eileen as you hired her initially to oversee investments. whether Rich your controller stays or not, is not urgent. having Tom report to a new person,- is. coordination with Suydam Kathy Gregory, I would suggest limiting to one person. The increasing public profile needs to be taken into consideration.

TODAY

With your acquiesence , Eileen did not report to Delson (he acting as a conduit directly to me) , she continued to provide bad info to both you (cash flows , stock accts, structures. sales Etc) and me. and each time with my many annoying calls to you made immediately afterwards that she was g.....y !! No one was hired to run YOUR office until two months ago , no one was even interviewed and even now , Brad, a very nice man, is not even full time,(crazy) Hours upon hours of time need to be spent training him . and his new staff. Eileen followed your instructions. not mine. in fact she continued to ignore mine saying " but Leon said " or " its on Leon's desk etc " , You would become frustrated when i pointed out each instance. of her obfuscation. originally you were given the clear choice, but to save money ,you chose not to hire my team . I was hired to do the architecture, you kept your own team. with Eileen at the head. instructions were given by me, , detailed but ignored by her. (except in the instances where I inserted myself and personally had to do the weeks of grunt work),ex. jpm morgan acct still not in use? That being said, If you do the cold calculation ,starting from where you were, to where you are currently . you have made a hell of a deal. -- negotiating down my original amount requested , calling upon our friendship and suggesting that the Carlyn mess was partially my fault. (though in that specific example , I had never been asked to do more than merely provide you the name of the most highly recognized atty in the field, not consulted,nor even asked again for my guidance along the way.). I accepted the discount as your friend. (by the way ,,suggesting now, that your Tom is now that last word on tax characterization, frankly is a bit much,-). however - that is all in the past.

In order to move forward

I would ask that you realize that very unlike yours, My business is only comprised of my personal attention and my personal time . Time that I was forced to grossly overspend on your various issues last year. . As you are my very close friend I will not have you participate in a bidding process that I have decided i will have this year for my time . (hopefully a more fair way to allocate) I would also ask that you keep in mind that though our deal expired months ago. (also keeping in mind , that your understanding of the final payment terms neither reflected the emails or my memory, we finished it up your way.) I have answered every call Brad , joslin, Ada or you, have made . reviewed docs over and over/ until once again, I was forced to insert myself strongly as I thought it dangerous not to. I made serious dollar and time concessions last year.very serious I am wiling to continue to accommodate some of your concerns , but I am, under no circumstances , none, willing to spend my time for free. its not fair. After cleaning up Carlyn's mess , which was a few weeks and 30 million dollars . We were both highly aware of the dire circumstances in which you found yourself last year, and in fact due predominately to its seriousness. and those very circumstances I took extra care in our negotiations . (you had claimed I had you over a barrel , (a horrible position to be in with my very close friend.), unfortunately I fear that if you are not cautious ,in the near future, another barrel will appear of your own design)

I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (
FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,.

share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine . We are scheduled to meet fri at 430 , I leave at 5 am sat morning.

Date: Mon, Apr 21, 2014 at 11:39 AM
Subject: trying to bridge the gap.
To: Melanie Spinella [redacted]
you were at 30 30/ me at 60 40. . / proposal 50 /25 and in additon I would be allowed to recommend 15 from directly from your own foundation. All payments to be made in addtion to currently owed. so $40 on april 25 , $30 june 15 ,and the alreadly owed $10 as planned on oct 15. I would direct the 15 charity in the next 12 months, and the last 25 to be paid on conclusion.
leon
10 am - Arrival at White Plains / Westchester Airport
FBO and US customs is "Jet Systems Aviation"
Adress: 85 Tower Road Hanger E, White Plains, NY, 10604
Telephone [redacted]

Date: Wed, Mar 25, 2015 at 11:52 PM
Subject: previously sent
To: Melanie Spinella [redacted]
I heard you when you said you believed i had already been paid for the work that is now required. The art partnership has fully answered all your concerns and discharged all my obligations and more so. . (FYI Carlyns art partnership that you referenced is similar in only its title.) You will also recall that you required that my payments be at the end of my work not at the beginning as everyone else's .(my work was never to include hours upon hours of training your staff). I eventually agreed, this of course should make clear that the 2014 tax year that will close Oct 2015 is not covered by our past agreement at all. I pointed this very fact out to you when I initially proposed a multi year agreement right out of the box. you said you preferred not. As you said ,I have produced results to date, far in excess of even my own exalted opinion of my projections. I have devoted a monumental amount of my limited amount of time-- way, way in excess of our agreement. I will be fair, I am willing to roll in the amount still outstanding from last year if that helps .. However, As my best student , and my only one, you are now capable of doing most, if not all, of the required work yourself. I can put my whiteboard away when you come to eat and just have fun, trade stories,. share moments ideas etc. . I am of course always available to guide you as a friend if you choose that route . always . It will take a great deal of your time , but you will not have to spend any more money on mine . We are scheduled to meet fri at 430 , I leave at 5 am sat morning.So there are no surprises 50m for the year. . or 30m for until 7/ 15. you can roll the balance for last year as a concession. half up front. no more all at the end. ive spoken to brad every day. more questions than answers. joslyn cannot be left unsupervised. his answers are knee jerk . eillenn told me this , that the other

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Date: Thu, Mar 26, 2015 at 12:07 AM
Subject:
To: Melanie Spinella [redacted]>

you need to build an entire office from scratch. no question that was never my obigation, - systems , personel. finance tax, bookeeping, ,office. complinace. investment. monitoring, banking loans coming due , review. gs jpm gs, . . plane boat houses construction , new will, . phaidon sale. you are no further ahead today than my nov memo layed out = no real candidates. etc .. Ill redo the art partnership under new restrictions of course at

no charge, and review the work done by tom/ joslin.
joslin you and I should sit. you won't like it. AT ALL> he is afraid of telling you the story, as he belives brad is your guy and does not want to get fired. ada still refusing to share income tax opinions based on privilege , not under control at all. ? ? joslin said that murphy is not the cfo, as you told me but the coo. and the cfo is the same guy that reported to andrew, mistakes after mistakes not picked up by murphy who joslin described as a kind buffoon . he suggested a new ceo or coo who can make decisions. someone with some financail experience. he asked for a chief decision maker. 50 for year roll in money owed . 30 till july , most up front needed

Date: Tue, Mar 31, 2015 at 3:25 PM
Subject:
To: Melanie Spinella [redacted]

Nov of 13 : I told you tom Eileen and Ralph were not up to the job, you disagreed very vocally and strongly , " Ralph wrote the book, Tom has been doing it for 15 years and Eileen ran the trading desk at Morgan Stanley. " Ada who had been working on all your documents for years while at the bank had been brought in- house but created more issues that didn't exist. and phaidon was its own animal
.
Dec 13. you were again annoyed that i said that they needed to be replaced and said "i was talking out of both sides of my mouth." first time (email available)

Jan 14, you decided that no third year was necessary for my help. and i told you i thought that unwise and even suggested giving you an option at 40 m so there would be no tension

Mar 14, I told you that to do the job right , my team would need to do it. not yours it would not be inexpensive, but it would get done properly, you chose not to do itand said lets wait and see

April 14. We agreed to clean up various past mess.with the end of my work OCT 15th only then would i get paid.. urged JPM (first of 14 reminders)
GS and db accounts to be set up in order to bring your financial structure into the 21 century

July 26 , I came to bens party, said new people needed to be hired, keep Eileen till end of year, and Ada till march, you suggested getting ada out earlier

oct structured the art partnership , but you wanted to wait until you fully understood ramifications formed the doc in dec to have it in 14,

nov/ dec 14 I told you I considered my work complete separate from art partnership. gave list of things to do. three months of you and your high school friend , trying to build a house with little of the relenavt experience. its silly . still no accurate numbers accounting , charts, etc
jan 15, I told you joslin cannot hire people, has not so for more than 5 years, former job in a public accounting firm.
april 15 . no senior accountant even in the wings. joslin talking about reaching out to hire the only person he knew(worked in the past with dagazsitno) and i interviewed 15 months ago. and rejected. low level . He does not want to hire himself out of a job, spoke to brad last night he wants a coo so that he does not feel demoted

your choice!, (brad maybe does have insight - to your credit, might have been right when he said- jeffrey you should realize this is only about leon not wanting to pay more money , (i ignored his summary , along with his comments on the risk of fracturing

summary
I can either do it for you or not. if i do it it means finding hiring organizeing, structuring reviewing re negotiating, bring in my team under my control not brads. . stop -gap accounting - my people getting the books software and procedure in shape. setting up the various brokerage and bank accounts and rationalizing them, organizing Melanie, TPS , house, and all the intra family notes outstanding, overseeing the phaidon mess.maybe sale re do some of estate given the new circumstances. etc. I 've responded to every brad question , given him first lessons , not a good use of my time or his. he should administrate, follow up, have signing authority instead of eileen, (AFTER rationalized accounts). holding a position of trust. ONLY

talk whenever you like, NO STRESS , Mort had a skiing accident and sultan not fully comp es mentes. no stress please for either of us . both of our reserves which are not insubstantial , can use a break

Date: Tue, Apr 7, 2015 at 4:29 PM
Subject:
To: Melanie Spinella [redacted]
agenda for tomorrow.
1 building an office from scratch. who does it. ? so far little or no progress in real terms. . brad should remain and can administrate. follow up methodically, . has no idea of corrrect questions to ask. or understanding of family office issues. procedures checlks and balances. etc .. consultants , diana goldner foundtaion woman?. office . focus .
2. without strong , very stroung direction, joslin will not make it. does not know where to focus. who to respond to. and how. unfortunately now getting more and more answers like the powers that be , want it that way.??
3. the priority list is still virtually the same , since dec. . accounting system. redone from scratch. etc.
4 . it will take 9 months. at a minimum now. . an outsider brought in when everything is clean , including phaidon, notes. eileen. banks, jpm db, bam, etc.
5 disposition, of Phaidon. art space regan etc.(ressler??) . sale of boat. plane . art , stock, investments, athene? etc, tra, brh.
6 . new IT . complex. household . payroll insurance . recurring bills.
7 estate modification given new circunstances and altered probablities. (use etc)
8 charity, new trusts,!!d IPI< harvard . fees,
I spoke to brad and made him aware of all my concerns and propsals to move forward. he is desperate for help

Date: Tue, Apr 14, 2015 at 11:53 PM
Subject:
To: Melanie Spinella [redacted]
saved you 500k at the last minute, . brad has had the same chart since march 16th, its his job to review NOT MINE .appears he is one of those living in the dark leiwe. I found 8 million dollars today, missed deductions. . not yet in the numbers, .?

Date: Tue, Apr 21, 2015 at 1:10 PM
Subject:
To: Melanie Spinella [redacted]
emblematic of my frustration and ,in the end what I believe is a waste of our time energy money and resources. is the very simple question of bidco bank accounts. 4 months ago I asked the question , does it have a bank account and if so , who has authority, where is it located and what transacations ran through it. it is only one question out of hundreds that need to be answered. hundreds. . you asked that i not behave like Zeus and try to explain why I want need certain things. since i said to placate Brad's inquisitive ness and his desire to learn I said a filing might be required. instead of merely getting me the answer. he has talked to joslin paul weiss , you , you wanted to ask brad karp. (maybe a filing that reopened things,)
none of this as a practical matter has any influence upon the ultimate action taken . I merely needed to

know a simple answer. and today after asking at least every week since then do not have an answer . I have been trying not to add stress to your day. i try to explain things and take the time to do so gently, (not my forte . this is one question out of hundreds. the fact that a 21 year old was in the office only xeroxing for a month, was obvious to everyone in the office. having a 26 year old xeroxing instead doesnt move us forward, answers first. copying old files. can wait.

Date: Wed, Apr 22, 2015 at 1:56 PM
Subject: another flowery email.
To: Melanie Spinella [redacted]
I am sorry. I realize you are under tremendous stress, In Bedford you asked me for my help I could not have been more clear that thought it very unwise as in my words I did not want any financial arrangment between us, it risked conflict and tension what neither of us needed more of. and did not want to risk torturing our friendship into the likes of the kind you have with Mark nor Josh, : now,- I dont have anyone but you yelling at me , in my own house. no one. it is highly unpleasant but I am trying my best to be understanding . sorry . From the outset and as you told me you recall. i tsuggested that three years should be the period of engagment. as planning is not a one year excericse . you declined to commit to a number of alternatives presented to you for payment of the third year. I told you in nov that you should decide whether to now sign on for that very third year as the vast majority of my work ended on oct 15. you recently told me you thought i was kidding. .you hired brad patting him on the back that after months of inquiry he can now, finallly tell you which llc owns the cars??
once he has all the facts what next ??. whether or not you refer to a portion of the third year as after care, or whatever term besides 'scoundrel you choose to use, I m not sure why you assume now it should be free.(I HATE THIS CONVERSATION < HATE ,) and i heard you when you said you told me what was l work still to be done you thought valuable enough to pay for. please tell me . and then we can decide the next steps ,,, if any. I consider my work rarefied art. I guess the value is in the eye of the beholder . IT reminds me of those people looking at a modern art piece and saying " my child could do that " . hope you are feeling better.

Date: Fri, May 1, 2015 at 12:50 AM
Subject:
To: Melanie Spinella [redacted]
ada and brad are respondbile for the loan ,. docs, at a minimum , leon he hasn't read the financial statements SINCE DEC. !!. impossible ,had he done so the silly numbers jump off the page . (sent in another email). it is a financial office., 190 million sitting unused in CASH , budget and planning person for what , its not a publice co. ? townhouse construciton , household operations, boat, plane, taxes, we went through this with the cash flow. you and i know approx how much each will cost. its a week job not a fulll time one- ada has no lien copies. none. ?! impossible not to know , ask, quesiton? two senior accountants CPA s. not the 75k girl that they hired, . IT professional backed by a firm. high quality,can we tap apollo resources? new lawyer , heather level . new receptionist, and bookeeper. get rid of ava. next could be new office ,new furniture , , the whole place reeks of cheap. IT IS MAY< I have not been asked to interview one person to date. not one. having cpas in there tomrrow woudl go a long way. i dont understand the time line, coo first. ? in by july?? cpas in by sept . tax return due oct 15. ?

Date: Fri, May 1, 2015 at 2:36 PM
Subject:
To: Melanie Spinella [redacted]
I know that both you and I heard brads'. im out of here if i dont get a coo. . sorry,. i know that neither of us have stood in the way of his finding/ gettting one.. JPM account DB account GS account, ??? its MAY 1. nothing in the first quarter and these are only papers that need signing.
I suggest your thinking on my role and compensation for my work might benefit , from a mental shift - think mark and josh, without the mutual resentment (HAHA) only in terms of sharing ,thanks, I am and have been your financial partner i.. rectifying circumstances that appear in hind sight unexplainable. I wish you woudl have asked me earllier to review your things , but i understand. I do know that soley as a result of my actions

your personal bottom line has increased dramatically, if you had thought of me as your partner in this endeavor , instead of an employee, i think your reaction to sharing t benefits would be different.
If you recall, you wanted me to be paid , unlike others at the END of my work. we discussed this ad nauseum, and agreed OCT 15, last year was the end . You had wanted more comfort initially on the art partnership so that date was delayed. It has now been six monhts since then, your concept of aftercare . . for free. was already unique , in your words this has to have an end.(weaned) if the actions of josh and mark led to one hundred million dollars , what would be their share. Im not sure why it is different in your mind. but i respect the fact that it is, Is it because their work seems harder. it cannot be simply because they devote more time to you .or it appears to involve more effort. I am happy to continue to play a partnership role. as I have been in many areas of your life. . I am also happy to move on and have no more of these emails. I find them as tedious as you do . if you prefer a partnership structure , ok with me, I tried to minimize the amount of money i would recieve by making it a flat fee . as i wanted you to feel good and have no second thoguths somehow if the payment comes from a partnership structure you seem relaxed as opposed to writing a check, I focus on trust and friendship first, and the fact that you don't include josh and mark in that category, gives me great pause . I proposed 33 percent of money made for you. . in the past you agreed that amount. it will be huge, but ok with me, I can talk today at 945 as you suggested. or if you woudl rather over the weekend ok

Date: Fri, May 1, 2015 at 7:08 PM
Subject: Fwd: Picasso agreement - question
To: Melanie Spinella [redacted]
silly

Date: Fri, May 1, 2015 at 12:27 PM
Subject: Picasso agreement - question
To: Brad Wechsler [redacted], "Jeffrey Epstein (jeevacation@gmail.com)" <jeevacation@gmail.com>

Brad and Jeffrey,
Gagosian has one final change to the Picasso agreement. As you know, we have structured this agreement with the Buyer as either Narrows Holdings LLC or AP Narrows LP, and given both of those entities the right to assign the agreement to any one among Leon, Debra, the kids, or family trusts including APO1 and APO2.
Gagosian wants us to agree that, if Narrows/AP Narrows assigns the agreement to someone else, Narrows/AP Narrows "shall not be discharged from its liabilities under this Agreement and shall remain primarily liable to Seller." Larry is concerned that we might assign to the Black kids or to a trust that has no assets, and then when he has to sue us because we don't make the final payment of the purchase price but have possession of the art, the entity/person to which we have assigned the agreement has no money.
I think this is a valid concern and that we should agree to it.
However, Ada just reminded me that it is possible that Narrows/AP Narrows (really, Leon's) agreeing to effectively guarantee payment by the assignee might be considered a gift to the assignee. In the discussions with Alan about rearranging the bank loan once AP Narrows is operational, Alan agreed that there could be deemed to be a potential gift from Leon to APO1/APO2 if Leon provides a guarantee to the bank that is for the benefit of the trusts as partners in AP Narrows. Alan suggested mitigating this risk by having the trusts sign side agreements with Leon which say that if AP Narrows defaults on the loan and the bank goes after Leon on his guarantee, the trusts will make him whole.
This issue only arises if we assign the agreement. The risk is also limited in time because it would run from the moment we assigned the agreement until the final payment is made, which even if we assigned immediately after signing, would only be 11 1/2 months.
Shall I agree to Gagosian's request that Narrows/AP Narrows remain liable even if they assign the agreement?
I'm in the office if you would like to discuss this, but I would love to get back to Gagosian ASAP so we can have this agreement signed today.
Thanks,

Heather

Date: Mon, May 11, 2015 at 3:08 PM
Subject:
To: Brad Wechsler [redacted], Melanie Spinella [redacted], Ada Clapp [redacted] Richard Joslin [redacted]
lets look at funding the art partnership begin with 100 m of unencumbered art. plus 20 inveestment. and the same amoiunt of value from trust. leon should choose b trustee and begin to use mechanics. . later we can amend and add .
2 hire an IT person asap
3.I would hire jerry the woman. gittis. person
4 .I will find a subpart k person to handle partnership acct
5 , accounting software upgrade, onlilne banking needs to be seamless
6. not sure status of bringing plane boat acct inhouse?
7 prepare fbar report for june. draft next week
8 pahidon actuals vs projections. . new valuation
9 . new valuation of tra contract?
jpm db goldman sachs acct? new llc?
review of dec 31 books for all entities? bfp . etc

Date: Wed, May 13, 2015 at 3:04 PM
Subject: Fwd: jobs ahead
To: Melanie Spinella [redacted]
the list that we discussed.. i spent time with brad again. re the candidates . fiiling due, this week, next month, .

Date: Sun, Dec 28, 2014 at 5:18 AM
Subject: jobs ahead
To: Brad Wechsler [redacted], Melanie Spinella [redacted], Ada Clapp [redacted]

1. review accounting system. Book keeping softaware. staff, (senior accountant) methods on line banking, brokerage. cash mgmt. airplane reimbursement. boat sale. art purchases sales use and sales tax. tax filings FBAR FATCA, gaming commsion, pfics, insurance . uk co law.
2. review docs for TRA BRH grats, trusts, heritage will, insurance, art lending. medical, springing powers. two fire drill books. one needed for injury. other for death
3 review bills . boats , planes, legal, (PW, McFarlands all outside. legal and accounting. Toms bills over 400k . house projects. south ny ben
4 cashflow projections tax projections , interaction with Apollo accounting tax, Phaidon ,art space ,and Regan. legal accounting. audit
5. children meetings , review to date and allocations
6 review all role in payables. files scanned, no paper
7 review invesmtents for tax basis and unrecognized gain
8 schedule of all hedge funds . redeemables commitments etc.
9 charities pledges strucutre, staff ,

Date: Mon, May 18, 2015 at 2:17 PM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella [redacted]
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?
))::. in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to

eat the apple from the knowledge tree)
. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain) books as they were mystersiously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan
agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.

still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with : As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Fri, May 29, 2015 at 2:53 AM
Subject: ulysses 2.0
To: Melanie Spinella [redacted]
I realize it is only due to a lack of understanind of the job ahead. and not out of any sense of unwillingess to pay
- as opposed to merely hiring people to set up a family office, someone will have to do the following- separate from the art partnership which is my responsiblity . there still needs to be a huge amount of work done for 2015,16. not to mention that brad at the moment is going to have train the incoming team?? your call
strategic decisions re estate and other planning , sale of phaidon etc. . in addition setting up for the accounting for each strategy ie.:
income, estate, gift ,sales and use, transfer excise picasso, 1031 calder. . review and detailed oversite of IRS SEC GAMING NYS. real estate, entity valuations (many) tax filings- disclosures, follow up of grats, trusts ,defective trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank account need to be

rationalized, not only having brad step in to children investments . gift taxes, trust , loans, notes. payables. expenses allocations . . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds , miami) , commitments funds and charities , dividend treatment -important review of transcations relating to BRH (amendments) TRA sale (nuanced) , shareholder agreements, bank loan agreements new bank relationships. . wills, construction accounting and oversite , contracts planning permits etc..employee rules, regs, . checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, . stock options,(ie environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) review of boat expenses plane expenses, depreciation issues refunds etc. . rationalize all outside counsels and accounting firms
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, , Apollo in house counsel.
set up and oversee brokerage accounts at JPM DB GS and thoughfullly trade
. new IT system from top to bottom full time IT person
new accounting system - on- line banking cooridnated with reports . fire drills as per caruci (he sounds good) and . audit system,s . review of john murphy? joslin? dag? eva? .
in house, review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy re:
As new facts on the ground develop , phaidon debra, children meeetings, involvment ,
trustees adjusted, stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe?. real estate?, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc
you are sitting on over 100 m of cash???!!

Subject: Re: we're calling the sales tax guy at 6:30 pm - I'll come to your office
To: Richard Joslin [redacted], Brad Wechsler [redacted], Heather Gray [redacted]

sorry but this is emblematic of the silliness that appears to continue. ..... 1. How can we ask for a legal opinion when it is crystal clear that we don't yet have accurate facts or numbers , f. 2 Invoices have not been reviewed! corporate structure is convoluted and unexplored in detail. (was the boat captain on the call?) 3 Paul weiss is the attny , and should be charged with getting us info. . 4. Bringing in yet another outside lawyer without full vetting and consideration, a waste of time energy and money. . 5. ex. what is the location of charters shown on the invoice? do you know. . ? if th invoices are incorrect, does that give us any comfort in trying to defend an audit. . I saw three invoices only, and each had a different owner or address . .

Date: Mon, May 18, 2015 at 8:17 AM
Subject: agenda for tomorrrow
To: Jeffrey Epstein <jeevacation@gmail.com>, Melanie Spinella [redacted]
as a reflection on your voiced spirited concerns in the what have you done for me lately category ?
))::: . in the beginning . there was eileen and tom. (eve and adam,-- however it appears, she declined to eat the apple from the knowledge tree)
. that was it. ada was at the bank but reviewing docs. carlyn was in the kitchen making mush (abel and cain) books as they were mystersiously called was being kept soley by eileen, with little or no input ,correction or advice from tom. herarely if ever asked questions. expenses ie airplane was done in house apollo. (1031 exchange blown etc) at this time
as I recall you got quite annoyed, and agressive and initiated the" talking out of the both sides of your mouth " tiddy, when i suggested that the level of their competence left much to be desired. (ralph lerner's came later) .response - eileen ran the desk, tom is a partner, ralph wrote the book etc
re tax there was almost no oversight of income, estate, gift ,sales and use, transfer excise etc . IRS SEC GAMING NYS. real estate, valuations (many)tax filings- disclosures, etc. re grats trusts defect trusts, llcs corps , trustees , partnerships. foreign corps. 100 bank accounts. gift taxes, , loans, notes. payables. expenses. . , insurance.(life , art, split dollar), cashflows, operating biz, , investments, contingent liabilitiites.(funds ,

miami) , commitments dividends, BRH TRA, shareholder agreements, bank loan agreements. wills, construction, , contracts planning permits etc..employ rules. checking account reconciliations, crediti cards. jewelry , cost basis ,(art stock etc.) foundations regs , brokerage accts, old stock certificates. stock options,(environmental solutions still not done !). estate tax calcualtion firedrill, (note ,basis etc) low basis , step ups , however with no accounting system, no reveiw of boat expenses plane expenses etc. . many outside counsel with litle or no coordination.
Paul Weisss , Mcdermit Will, Macfarlanes. Price Waterhouse , Reich, withers bergman, Empire, , akin gump, bbd seidman, Wendy , Apollo in house .
lumber, knowledge universe, ennvironmental, solutions 12 mii in stock, . on and on
the priority list that you asked me to prepare for brad and you in dec , unfortunatlleyso far , little change ie no accounting system that ties, no, brokerage accounts though strongly suggested , jpm db, gs, april of 2014 . IT antiquated
dagastino hired , no inut from me, julie, temps, paralegals miriam . etc.
still need new accounting system - on line banking . staff hires. (seprate from samantha two years out of school). audit system, . ?? john murphy? joslin? dag? eva? . i strongly suggest workers at the highest level of competence. two senior accountants. not managers workers who will get into the weeds. partn expertise, , replace ava, get heather help. a new person legal , new IT,system and person, way way overdue, new receptionist, bill opener, ability to oeversee
in house, boat plane review household (12million) review, filings- partnerhip accounting,- familitarity with grats, trusts etc . audit system put in place. that should be the easy part. then strategy to deal with : As new facts on the ground develop , phaidon debra, children meeetings, ? stock sale sale of art, , apt(large gain), 1031 trade in , plane depreciation, boat sale. construction , brad will oversee brokerage and investment, ?? pe. real es, . publishing, grats, tra, brh (death). foundation , museum, tax proejctions cash flow projections, cooridnation with tax from apollo. etc

Date: Tue, Jun 30, 2015 at 12:23 PM
Subject:
To: Melanie Spinella [redacted]
1.I believe I have heard you , but i wanted to make certain that I have understood
Though after much discussion ,- much! you were adamant that i receive my fee only at the very END of my work, oct 15 , this was a long discussion but you felt very strongly at the time . you now feel that as it was a very large sum of money . some of my time this year should be spent on your recent concept of "after care ". - and that after care should be for free . I have continued to pay others as well.
I have asked and you have previously said you would lay out for me what you thought was encompassed by the concept. that was end of january Training brad?? who was your choice . not mine ,by a long shot. only brought on in january? ? hundreds of hours spent . eileen debrief? 2. boat. plane
household ex[penses. personal review? , trying to create accurate ledgers of capital expenses . so to minimize future gain.? 3. phaidon - review from head to toe? though we agreed many times in the past this was not my responsbility, 4. overseeing the opening of trading accts. proposed and sent over first docs in april of 14. .5. art partnership.? we agreed though the draft was sent in sept14 . and still not done though little different from first draft. . 6 picasso contract? 7 art sale 1031 8 airplane review? 9. IT system implementation. ? tra brh sec gaming comm, foerign filing , tax, disclosure. fondation returns. ? planning for 16? not sure . 10. insurane review with josh? stock sale prep. ? filing ?
I am available by phone. you mentioned my travel schedule ----last yea,r I canceled three European trips and two to seatle , none to my benefit.
I have been consistant , I dont have any new proposal , do you ? though i am" complicated" , I have no intention of trying to convince you of value, its silly ,
OOOOOOOOOOOOOOOOOO i think if I have correctly deciphered your sophisticated code - should represent -drool

Date: Tue, Mar 3, 2015 at 5:18 AM
Subject: Fwd:

To: Melanie Spinella [redacted]
lets set a time to speak today if possible . 30 minutes or so. my schedule is tight

From: jeffrey E. <jeevacation@gmail.com>
Date: Mon, Sep 21, 2015 at 6:36 PM
Subject: agenda for today 5 pm?
To: Melanie Spinella [redacted], Brad S Karp [redacted]
1. put someone on asap to ascertain if she is still in london. 2. set up conference will uk criminal and uk counsel. a give them more facts. 3. choose method of message delivery. my choice. - two highly respected former ---- fill in the blank, immigration, scotland yard. sfo. . who may knock on her door and present the terms. 4 if not. an alternative method. 5. Is it possible to find out if she has gone to authorities? tabloid lawyer. 6. have the same types of individuals availble in new york if she decides to return as stated. . i prefer former fbi, or immigration one man one woman. . 7 from opening a DA investigation to arrest. how long? 8 , can we open a file in either jurisdiction, and maintain confidentiality.

Date: Mon, Sep 21, 2015 at 6:48 PM
Subject: Re: agenda for today 5 pm?
To: Melanie Spinella [redacted]
Cc: Brad S Karp [redacted]
I think that Melanie should set up a separate email account for this correspondence. she currently is on an apollo server.
There is not even a good solution . all have substantial risks. we are dealing with a wholly unpredictable and bad minded person. I and Brad can only make suggestions/actions each less than stellar. - that being said we should do our best to have all the facts . options etc. and to distinguish fact from opionion As the consequences of any decision is likely to have some very bad parts , Leon needs to be cognizant of as much as the downside as we can adequately foresee.

Date: Wed, Sep 23, 2015 at 12:07 AM
Subject: Fwd:
To: Melanie Spinella [redacted]
jan 2 of this year
Date: Fri, Jan 2, 2015 at 2:55 PM
Subject:
To: Melanie Spinella [redacted]
Leon, I decided last week that there was little or no upside in disturbing your well earned holiday especially as you seemed so peaceful happy and smiley ,getting yourself in shape and truly enjoying your family time. etc. however the situation in your family office is unresolved. I am aware that brad starts monday howver, two last days of the year madness. timber.deal not complete no jpm,acct activity no partnership docs , old stock sales not complete , no bank doc redo. no phaidon note restructure, ., no boat expense review. airplane same ,topco midco.etc still not finished (trustee) , projections mixed with fiction. , legal exp out of control. no care for admin, silly (audit). tom conversation with joslin. notes. debra, trustee notes. trustees hiring . bens audit. interest payable made hoopjumping last day of year. after weeks and months. of lectures , gifts to discuss- staff. -houseproject mgmt. . I will continue to try , I had offered ajoint call with eileen before you left. as i said before , joslin takes instructions from eileen. he said it was made clear to him that he doesn't work for me but works for you. . I tried.

Date: Tue, Sep 29, 2015 at 8:39 PM
Subject:
To: Melanie Spinella [redacted]
jeffrey
Brad Wechsler is asking if you could meet for a half hour with him and Rich Joslin to discuss Use Tax Refund. Below are available dates/times...below that is your schedule. OK for me to schedule in?:

NO sorry not until i hear from leon
leon. to be fair, I had sent the first note to you one year ago . stating that my work would come to an end on oct 15. that day had meaning as everything would be closed. you asked that i continue to help brad. as of nov though he would officially start in jan. I said ok, but ..... " you told me to continue as we would work something out" I told you my fee then was 40 . feb you came with ben while kathy ruemmler was here. and said next week, debra got bad news. and I quickly prioritzed not adding stress to your situation. I wont regurgitate the interim, though millions of dollars were saved since. millions. . it is now one year later and you propose 10 mllion , plus a contingent fee . I have said that i would work with you , and if contingent and a percentage of something. I strongly believe that is not in your interest. I continue to put our friendship first and dont want you to write a check for over 100million andthe i will have to listen to lewie for the next few years. but if you prefer over my objection a percentage deal then it should be of all savings not just phaidon. (a random concept) . The idea that i am somehow even marginally responsible for neither you nor heather , ever telling me that there was an unresolved issue, though you said you had been pinged a number of times is emblematic .
I can do a call with you and Karp. anytime you like today, but i can assure you 100 percent that there is no light between our positions. ZERO. and he is ready to do his best to try to explain it to you.

Date: Thu, Oct 1, 2015 at 11:03 PM
Subject: Fwd:
To: Melanie Spinella [redacted]
to refresh your recollection, as 4 states. 40 a year for three years. as i said today. . the other was in addtion as you recall.
Date: Thu, Apr 11, 2013 at 4:02 PM
Subject:
To: Melanie Spinella [redacted]
1. 80 percent of contracted job is accomplished, now drafting ,signing and few critical decisions on your part still await , will fill in nec blanks, 1, how much of upside to kids. , 2, protections . 3 allocations. 4. charitiable, inventory, securities,
2 .to engage the second phase if you so choose , and considering there is only 8 more to be paid this year in oct , for the job now almost completed, total of 23. that was agreed only for history fix.
3. with the necessary proprietary protections , proposal is for first year only an additional 17 . making it 40 , but full year balance on signing , ie 25. takes care of 2013
4 , moving forward , 40 per year ,(approx 1 percent) for three years, to be credited against an agreed formula. Im open to suggestions total approx 120 for new workover 3 years , benefits to you over the next 20.
5 , can consider interests other than cash as payment. ?
6. need to speak re , bankers, valuations, mechanics and their continued importance.

Date: Fri, Oct 16, 2015 at 4:38 AM
Subject:
To: Melanie Spinella [redacted]
Office, - ada goes. , hire heather a paralegal . Joslin goes or is closely managed by new cfo with tax experience. . castrucii goes asap.as he merely adds to mess.(too many people , ex 7 people or more to pay a bill) eva goes. outsource as much as possible. . bookkeeping systems built from scratch, airplane restructure, boat . same, new grats. phaidon sale , decide on artspace survivability, regan, . do the kids really want these? , children accounting ie bens house.etc. re do estate for new facts. redo loans, trading accounts activity, . gaming -foreign- disclosures. . BRH TRA re thinks . household and construction architects. . redone. art partnership , choice of paintings. . re do structure of consultants. tax re family office. . decide if investments are a realistic option in the next three years.. insurance. operations. airplane , etc. . art foundation , private . max charity contributions. financial reports. still waiting. ? on line banking, . tax planning, family office deductions (profit center) . airplane certificate, redone jet aviation redo. . paper gigi (E)trust to avoid gift tax. .
today is Oct 15

With your full knowledge I paid out 8 mil to my staff before june, . so i guess I can safely assume that after consideration of all the things I did for the entire past year separate and apart from your unique free "after care" concept. , what you thought was ultimately fair was the contribution of 5 million to a foundation and a total of 2 million dollars to me.

Date: Fri, Oct 16, 2015 at 1:08 PM
Subject:
To: Melanie Spinella [redacted]
I think you should consider the fact that your family office will be the most central component of what you leave to your children , wife heirs. it is the core of your assets. your art might be sold. your houses may lie empty, the apollo stock could be sold. you will pass on your office , . it will be the primary player in your estate tax. probate, transition. Brad has taken it from a D minus to a C minus, If I were you I would set the goal of an A. just like your paintings. . Like a house you could attempt to renovate it. it will take more time and money . or . in essence as I suggested in dec of 13, start from scratch. A financail head of office. - brad could move to being richards replacment as trustee. . barry cohen would be perfect but carries the trustee taint now. . take a tax partner from a major firm. to replace joslin, cost 1 + mil . keep heather and ssmantha. . bring in full time IT person. ASAP . your lighting contractor in your new townhouse has better IT than your multi billlion dollar antique opersation. data breaches are not your concern. precision is. . either re do the office layout . or get enterly new space. the proposals to focus on following on a monthly basis the values of all your current investments is an example of misplaced prioirties. . Your office is the heart of the familys financial life and temp future, it needs a heart operation

Date: Mon, Oct 19, 2015 at 5:10 PM
Subject:
To: Melanie Spinella [redacted]
Radical but my preferred idea. . START from total scratch. there is absolutely nothing worth keeping in your family office except for heather , nothing at all . I remember when i bought my first house in order to renovate and jack robertson said forget it. knock it down start again, I could n't believe it. but he was right. Like your tax returns that were done in triplicate. TOM RICH ALAN. . tom and rich were not really useful in the end. Alan was the only smart one. you should in my opinion Start a brand new office. hire cfo. bring joe over. heather and samantha, run parallel for 6 months and close down the mess of elysium forever. leave your kids a functioning operation professionally constructed and managed. NOT BY ME!!! LAst nov i laid out priorities IT , being the first nothing as of today. in July I said focus on airplane as a test . to examine procedure and proficiency, so far mostly a waste of resources time people etc. Only last week told debra owns 49 percent of plane. no IT to speak of. bens house unaccounted for. tax returns very very sloppy, . boat still argued as third home. . pilots bonuses? , structure unkown by all. cash sitlling at the same time loans outstanding.
Phaidon , looks like close to breakeven in a few years. others totally unknown. Query , do you really want this ? : I m not sure how you both want to have an investment office and have cash flow being eaten by publishing and loans amounts outstanding increased by art. --interest rates will be going up.- . your plane will cost 10 million to refinance - so will boat if sold next year-. art space and regan , both needs more cash. with little return, taxes , art purchases . Part of radical solutition is to sell publishing.altogether. (are the children really interested.) . restrucuture plane from scratch. layers unncessary. simplify crazy structure s bank accounts trading accounts accounts payble. credit cards. etc. The best way to wean yourself away from me is to have someone else do the whole thing from scratch. . move brad to be the replacement for Richard. . he is nice but this is not what he does. Him saying it is soooo fucked up to me , was only an echo of me sayint it to you. .

Subject:
To: Melanie Spinella [redacted]
as brad can attest , I spent time today with joslin, joe. etc. no question at all, a failed experiment. In the words of a banker that made a call on your office. what happened? leon seems to have replaced Eillenn with a

team of Shleppers. ? I know you care little for what they may think , but the legacy you leave your kids is just that. you only have 60 days of planning left for this year. numbers are all over the place.
I recieved a nice call from Karp today, . He touted me as a great friend to you. I am happy to be just that.
. He said it was important for me to tell you what others won't. Keep heather , fire EVERYONE else.

Date: Mon, Oct 26, 2015 at 1:10 PM
Subject: CONSTRUCTIVE?
To: Brad Wechsler [redacted], Melanie Spinella [redacted]
1 cash flow projections for 16. . draft ok. i will be easy. i need rought projection. 2. phaidon chart laid out now with who signs in sale of shares vs enitities. ? ie managing memebrs. . 2 . 3 new trusts. Apo-o , dynasty, (does leon want to put in new restrictions per child). - publishing interests. . 3 llc, for investments 4 names insured? guarnatees? art loans. outstanding. sales or use tax owed? 4, comparison of execu jet vs jet aviation. . 5. the bank loan on the jet is going to come due. does leon prefer to extend f they would (he is a guarantor. ?) or will he need to pay 10 million cash to renew, that wiill determine new structure of plane. getting rid of rance, wells fargo, john hannon, lisa gratizaino etc. . 5. boat restructure . 6 grats - if leon decie to have another. 7 accountning for children, .

Date: Mon, Oct 26, 2015 at 7:08 PM
Subject: draft
To: Melanie Spinella [redacted], Brad Wechsler [redacted]
phaidon and art space. combined basis 96 million , (reviewed with brad and joe.) . add ten for restructuring . basis 106. mi. subtract total sale price. for both, lets say approx $8 - 15m . leaving loss of between 90 and 98 million long term loss. . AMT rate 28 % obama . tax 3.8% . city and state 12% total aprox 43 %. tax rate. savings 38.7 - 44 m

0:51 PM (15 hours ago)
to me, Richard, Karen
Good afternoon
Removal of headers in Cabana's 1 and 2 started today
Dock Shelters proposed start date 16 Apr
LSJ staff cottage and Sams kitchen and bath cabinets are due in this week.
Have yet to schedule install.
Will have estimate for GSJ Staff Cottage from EB by the end of the week
Unable to contact Jimmy again regarding thIs project, Reached our Monday to schedule site meeting, got a - No Can Do -
reply !!!
Regards Brice

Date: Mon, Oct 26, 2015 at 8:37 PM
Subject:
To: Brad Wechsler [redacted], Melanie Spinella [redacted]
gain at 20 % not 28. . so total , 35.8%. tax rate. same for boat. and plane each around 10 m so total 7 m savings if both sold

Date: Fri, Jun 3, 2016 at 5:56 PM
Subject:
To: Heather Gray [redacted]
heather leon seems to not recall the issue of finding an alternative to the eschange agents resale cerificate. he didnt remeebr you suggesting a gallery instead. you mentioned that he did not want to get another gallery involved. ? has any of the transactions been audited using this method , which even i find agressive.

Date: Fri, Jun 3, 2016 at 3:02 PM

Subject: RE:
To: "jeffrey E." <jeevacation@gmail.com>
Hi Jeffrey,

As you will recall, we used this same exchange agent last year on the Calder 1031. At the time, we discussed the merits of using a gallery versus a commercial exchange agent and my recommendation to Leon was to use a gallery. I felt that there were advantages to using a commercial exchange agent instead of a gallery on the 1031 side (e.g., less likelihood of a breach of confidentiality, IRS familiarity with CDEC in the event of an audit, security of funds), but that a commercial exchange agent gave us less comfort on the sales tax side. Leon did not want to use a gallery because he was concerned about confidentiality and he did not want to have to ask a gallery that he did not do much business with to act as exchange agent.

When Leon first discussed the exchange for the Cezannes with me a few weeks ago, I asked him if he wanted to use the same exchange agent as last year, or if he wanted to use a gallery. I said that a gallery carried little to no risk on the sales tax side, but I reminded him that he had not wanted to use a gallery last year for the Calder because of confidentiality reasons. He said to use the same exchange agent as before, which made sense to me because he was extremely concerned about confidentiality with the purchase of the Cezannes.

I will find out about sales tax audits and will let you know. The exchange agent has had a New York resale certificate since 2014 and has been engaged in art transactions like this since then, but I do not believe they have been audited. I will check, though, and I will also ask the Herrick lawyer if any of his clients who have done similar deals have been audited.

Best,
Heather

--

please note
The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of
JEE
Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to jeevacation@gmail.com, and destroy this communication and all copies thereof, including all attachments. copyright -all rights reserved

2012 WL 257568 (C.A.2) (Appellate Brief)
United States Court of Appeals, Second Circuit.

In re: TERRORIST ATTACKS ON SEPTEMBER 11, 2001.

Nos. 11-3294-cv(L), 11-3407-cv(CON), 11-3490-cv(CON), 11-3494-cv(CON), 11-3495-cv(CON), 11-3496-cv(CON), 11-3500-cv(CON), 11-3501-cv(CON), 11-3502-cv(CON), 11-3503-cv(CON), 11-3505-cv(CON), 11-3506-cv(CON), 11-3507-cv(CON), 11-3508-cv(CON), 11-3509-cv(CON), 11-3510-cv(CON), 11-3511-cv(CON).
January 20, 2012.

On Appeal from the United States District Court for the Southern District of New York

Appellants' Consolidated Brief with Respect to Dismissals for Failure to State a Claim and Foreign Sovereign Immunity

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***i Corporate Disclosure Statement**

In accordance with Federal Rule of Appellate Procedure 26.1, appellants certify as follows:

11-3509 (Ashton v. Al Qaeda Islamic Army):

Appellants are natural persons.

11-3503, 11-3505, 11-3506, 11-3507 (Burnett v. Al Baraka Investment & Development Corp.):

Appellants are natural persons.

11-3508 (Cantor Fitzgerald & Co. v. Akida Bank Private Limited):

Appellants Cantor Fitzgerald & Co.; Cantor Fitzgerald Securities; Cantor Fitzgerald, L.P.; C02e.com, LLC (now known as Cantor C02e, LLC); and Cantor Index Limited have no parent corporation and there is no public corporation that holds more than 10% of any of them.

Appellant eSpeed, Inc. (now known as BGC Partners, Inc.) has no parent corporation and there is no public corporation that holds more than 10% of it; BCG Partners, Inc. is publicly-held.

Appellants Cantor Fitzgerald Associates, L.P. (now known as BGC Capital Markets, L.P.); Cantor Fitzgerald Brokerage, L.P. (now known as BGC Environmental Brokerage Services, L.P.); Cantor Fitzgerald International (now known as BGC International); Cantor Fitzgerald Partners (now known as Seminole Financial); eSpeed Securities, Inc. (now ***ii** known as

HOUSE_OVERSIGHT_023361

Aqua Securities, L.P.); Tradespark, L.P; and eSpeed Government Securities, Inc. (now known as eSpeed Brokerage, L.P.) have no parent corporation; BGC Partners, Inc., a publicly-traded corporation, owns more than 10% of each of them.

The parent company of Appellant Cantor Fitzgerald Europe is Cantor Fitzgerald, L.P.; no publicly-traded corporation owns more than 10% of it. *11-3510 (Continental Cas. Co. v. Al Qaeda Islamic Army):*

Appellants Transcontinental Insurance Company, Transportation Insurance Company, National Fire Insurance Company of Hartford and American Casualty Company of Reading, Pennsylvania are wholly-owned subsidiaries of plaintiff-appellant Continental Casualty Company; plaintiff-appellant Valley Forge Insurance Company is a wholly-owned subsidiary of plaintiff-appellant American Casualty Company of Reading, Pennsylvania; and plaintiff-appellant Continental Casualty Company is a wholly-owned subsidiary of CNA Financial Corp., which is publicly traded.

11-3294, 11-3407 (Estate of John P. O'Neill v. Republic of Iraq):

The Estate is not a corporate entity.

***iii** *11-3496, 11-3500, 11-3501, 11-3502 (Euro Brokers, Inc. v. Al Baraka Inv. & Dev. Corp.):*

Appellant BGC Brokers US, L.P. (successor to Euro Brokers, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant BGC Financial, L.P. (f/k/a Maxcor Financial, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

BGC Financial Asset Management, Inc. (successor to Maxcor Financial Asset Management, Inc.) dissolved December 23, 2010.

Appellant BGC Information, L.P. (successor to Maxcor Information, Inc.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Seminole Financial Limited (successor to Euro Brokers Ltd.) has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant Tradesoft Technologies, Inc. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

***iv** Appellant Euro Brokers Financial Services Limited dissolved April 23, 2008.

Appellant Euro Brokers Mexico, S.A. de C.V. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

Appellant Euro Brokers (Switzerland) S.A. has no parent corporation; BGC Partners, Inc., a publicly-traded corporation, indirectly owns more than 10% of it.

11-3490, 11-3494, 11-3495, 11-3511 (Federal Ins. Co. v. al Qaida):

Appellants Federal Insurance Company, Pacific Indemnity Company, Chubb Custom Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of Canada, Chubb Insurance Company of New Jersey, Great Northern Insurance Company, and Vigilant Insurance Company are members of the Chubb Group of Insurance Companies. Appellants' parent organization, The Chubb Corporation, a publicly traded corporation, owns more than 10% of their stock.

Appellants One Beacon Insurance Company, One Beacon America Insurance Company, American Employers' Insurance Company, The Camden Fire Insurance Association, and Homeland Insurance Company of New York are members of the One Beacon Insurance Group. Appellants' ***v** parent organization, White Mountains Insurance Group Ltd., a publicly traded

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corporation, owns more than 10% of their stock.

Appellant TIG Insurance Company is a member of the Fairfax Financial Group. Appellant's parent organization, Fairfax Financial Holdings Ltd, a publicly traded corporation, owns more than 10% of their stock.

Appellants American Alternative Insurance Corporation, Great Lakes Reinsurance U.K. PLC, and The Princeton Excess and Surplus Lines Insurance Company are members of the Munich Re Group. Appellants' parent organization, Muenchener Rueckversicherungs-Gesellschaft Aktienqesellschaft, a publicly traded corporation, owns more than 10% of their stock.

Appellant Allstate Insurance Company is a member of The Allstate Insurance Group. Allstate Insurance Company is wholly owned by The Allstate Corporation, a publicly traded corporation.

Appellants Boston Old Colony Insurance Company, The Continental Insurance Company, Commercial Insurance Company of Newark, NJ, CNA Casualty of California, Continental Insurance Company of New Jersey, Fidelity and Casualty Company of New York, Glens Falls Insurance Company, and National Ben Franklin Insurance Company of Illinois are ***vi** members of the CNA Insurance Companies. Appellants' parent organization, the CNA Financial Corporation, a publicly traded corporation, owns more than 10% of their stock.

Appellant Hiscox Dedicated Corporation Member, Ltd. is a member of Lloyds' Syndicate 33.

Appellants ACE American Insurance Company, ACE Capital V Ltd for itself and as representative of all subscribing underwriters for ACE Global Markets Syndicate 2488, ACE Bermuda Insurance Ltd, ACE INA (Canada), ACE Indemnity Insurance Company, ACE Insurance SA-NV, ACE Property & Casualty Insurance Company, Atlantic Employers Insurance Company, Bankers Standard Insurance Company, Indemnity Insurance Company of North America, Insurance Company of North America, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, and Pacific Employers Insurance Company are members of ACE INA Group. Appellants' parent organization, ACE Limited, a publicly traded corporation, owns more than 10% of their stock.

Appellant Woburn Insurance Ltd. is a captive insurance company, wholly owned by Viacom Inc.

Appellants AXA Corporate Solutions Assurance, AXA Corporate Solutions Insurance Company, AXA Corporate Solutions Assurance UK ***vii** Branch, AXA Corporate Solutions Assurance (Canada), AXA RE Asia Pacific Pte. Limited, AXA RE, AXA RE Canadian Branch, AXA RE UK Plc., AXA Corporate Solutions Reinsurance Company, AXA Art Insurance Corporation, SPS Reassurance, AXA Re Madeira Branch, Compagnie Gererale de Reinsurance de Monte Carlo, AXA Versicherung AG, AXA Cessions and AXA Global Risks UK, Ltd. are members of the AXA Group. Appellants' parent organization, AXA S.A., a publicly traded corporation, owns more than 10% of their stock

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***1 Preliminary Statement**

Plaintiffs-Appellants are family members of the nearly 3,000 people killed in the September 11, 2001 terrorist attacks; thousands of individuals who were severely injured as a result of the attacks; and commercial entities that incurred billions of dollars of property damage and other losses as a result of the attacks (collectively "the September 11th plaintiffs" and/or "plaintiffs"). Consistent with the rights conferred upon them by the Anti-Terrorism Act (ATA), Torture Victim Protection Act (TVPA), Alien Tort Statute (ATS), and long-standing principles of common law concerted action liability, plaintiffs brought these lawsuits, which were consolidated below by the Judicial Panel on Multi-District Litigation, to hold accountable the charities, financial institutions, individuals and other parties that knowingly provided material support or resources to al-Qaeda for more than a decade before September 11, 2001, and thereby provided al-Qaeda with the means to successfully conceive, plan, coordinate, and carry out the September 11th Attacks. The district court dismissed plaintiffs' claims against five defendants-appellees ("Defendants") pursuant to Fed.R.Civ.P. 12(b)(6), holding that, despite the existence of remedies specifically designed for victims of terrorist attacks, plaintiffs ***2** were entitled to seek *no* relief against those who had supported, conspired with, and/or aided and abetted al-Qaeda in carrying out the worst terrorist attack ever to take place on American soil.[1] This Court should reverse the district court's rulings with respect to these Defendants -- Al Rajhi Banking & Investment Corp. ("Al Rajhi Bank"), Saudi American Bank, Saleh Abdullah Kamel, Dallah al Baraka, and Dar-Al-Maal Al Islami ("DMI") Trust -- because the pleadings sufficiently allege that each of these Defendants knowingly provided material support and resources to al Qaeda in the years leading up to the September 11th Attacks, so that each of them is properly held accountable under the ATA, the TVPA, RICO, the ATS, and/or the common law.

Taken collectively, the facts and allegations contained in the plaintiffs' complaints, RICO and More Definite Statements, and extrinsic materials formed a vast record, spanning literally tens of thousands of ***3** pages. Evaluated in a manner consistent with the standards of review for motions addressed to the adequacy of pleadings, the vast record presented by plaintiffs to the district court established that plaintiffs' allegations were sufficient to state claims against the Defendants under the ATA and other relevant causes of action.

In the face of these extraordinarily detailed and supported pleadings, which more than satisfied the requirements of Rule 8, the district court nonetheless held plaintiffs to an improper *heightened* pleading standard, specially applicable to cases involving allegations of terrorism. Nothing in the Federal Rules of Civil Procedure, and no precedent of this Court or any other of which plaintiffs are aware, authorized this heightened standard, nor is such a heightened standard appropriate for plaintiffs who have suffered such grievous injuries or for defendants who are alleged to have committed such heinous acts.

The district court also ignored the wealth of details provided by plaintiffs in their supplemental filings, failed to credit the allegations in the pleadings, and failed to draw inferences in the plaintiffs' favor. The court also misconstrued the scope of the Alien Tort Statute, under the erroneous belief that acts of international terrorism do not, in and of themselves, ***4** violate the "laws of nations" unless they involve the hijacking of an airplane. The court also applied the wrong statute of limitations to certain of plaintiffs' claims and misconstrued the scope of the TVPA. The combination of these errors resulted in the dismissal of all of plaintiffs' claims against some of the most significant financial institutions that provided knowing support to al-Qaeda, enabling it to train the September 11 hijackers and plan and carry out the attacks. And, in dismissing three Defendants on the basis of sovereign immunity, the district court applied a decision of this Court that has since been overruled.

This Court should reverse the judgment of the district court and hold that plaintiffs may pursue their claims against these financial sponsors of terrorism.

Statement Of Subject Matter and Appellate Jurisdiction

The United States District Court for the Southern District of New York had subject matter jurisdiction over these actions pursuant to 28 U.S.C. § 1330, 1331, 1332, 1350, 1367, 1407, and 1605, 18 U.S.C. §§ 1964 and 2338, and 49 U.S.C. §40101.

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Plaintiffs assert claims under the Anti-Terrorism Act, 18 U.S.C. §§ 2331 *et seq.*, and under the Racketeer-Influenced and Corrupt Organizations ("RICO") statute, ***5** 18 U.S.C. §§ 1962 *et seq.*, which conferred jurisdiction on the district court through the specific grants of jurisdiction applicable to each statute and pursuant to 28 U.S.C. § 1331. In some of the underlying cases, plaintiffs and defendants were diverse, in that defendants were citizens of foreign states or of states different from the states in which plaintiffs were citizens. Plaintiffs who are not U.S. persons assert claims for violations of international law, over which the district court had jurisdiction pursuant to the Alien Tort Statute, 28 U.S.C. § 1350. The district court further had supplemental jurisdiction over plaintiffs' common law claims pursuant to 28 U.S.C. § 1367. Where defendants claimed immunity under the Foreign Sovereign Immunities Act and plaintiffs asserted the application of one or more exceptions to immunity, the court had jurisdiction pursuant to 28 U.S.C. §§ 1330 & 1605. In addition, actions originally filed in other jurisdictions were transferred to the Southern District of New York by the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. § 1407.

This Court has appellate jurisdiction of this matter pursuant to 28 U.S.C. § 1291. The district court dismissed defendants in this case in six orders dated January 18, 2005 (*In re Terrorist Attacks on September 11, 2001*, 349 F. Supp. 2d 765 ("*Terrorist Attacks*") (S.D.N.Y 2005)); September ***6** 21, 2005 (*In re Terrorist Attacks on September 11, 2001*, 392 F. Supp. 2d 539 ("*Terrorist Attacks II*") (S.D.N.Y 2005)); November 20, 2006 (*In re Terrorist Attacks on September 11, 2001*, 462 F. Supp. 2d 561 ("*SAMBA I*") (S.D.N.Y. 2006)); December 14, 2006 (*In re Terrorist Attacks on September 11, 2001*, 464 F. Supp. 2d 335 ("*DMI-Kamel*") (S.D.N.Y. 2006)); June 17, 2010 (*In re Terrorist Attacks on September 11, 2001*, 718 F. Supp. 2d 456 ("*Terrorist Attacks IV*") (S.D.N.Y. 2010)); and September 13, 2010 (*In re Terrorist Attacks on September 11, 2001*, 740 F. Supp. 2d 494 ("*Terrorist Attacks V*") (S.D.N.Y. 2010)).[2] Additional defendants remain in the case, which is still pending below. On July 14, 2011, the district court entered a partial final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure in favor of 75 defendants dismissed in those four orders, including each of the appellees. Plaintiffs timely filed their notices of appeal on August 9, 2011, August 10, 2011, and August 11, 2011.

Statement of Issues Presented for Review

1. Whether plaintiffs' allegations, accepted as true and with all reasonable inferences drawn from them in plaintiffs' favor, constitute a ***7** *prima facie* showing that each of five defendants, for purposes of 18 U.S.C. § 2333, knew that or recklessly disregarded whether al-Qaeda was the recipient of the financial and other support each defendant was providing to al-Qaeda.

2. Whether, for purposes of claims asserting violations of "the law of nations" under the Alien Tort Statute, 28 U.S.C. § 1350, such violations include acts of international terrorism or are limited to the hijacking of commercial airplanes.

3. Whether claims arising under the Torture Victim Protection Act, 28 U.S.C. § 1350 note, can be asserted against defendants who are not natural persons, including corporations and other legal entities.

4. Whether plaintiffs' allegations, accepted as true and with all reasonable inferences drawn from them in plaintiffs' favor, constitute a *prima facie* showing that defendants who provided material support to al-Qaeda owed a duty of care, in relation to negligence claims, to victims of an al-Qaeda attack in the United States.

5. Whether plaintiffs' intentional tort claims related to the September 11, 2001 attacks in Virginia and Pennsylvania are subject to New York's one-year statute of limitations.

***8** 6. Whether plaintiffs' intentional tort claims related to the September 11, 2001 attacks in New York, Virginia, and Pennsylvania are subject to equitable tolling even if subject to New York's one-year statute of limitations.

7. Whether the dismissals of three defendants, based on a decision of this Court construing 28 U.S.C. § 1605(a)(5), should be vacated because this Court has overruled that earlier decision since the filing of notices of appeals.

Statement of The Case

Nature of the Case and Course of Proceedings

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On September 11, 2001, members of the al-Qaeda[3] terrorist organization hijacked four commercial airliners and used those planes as weapons in a coordinated attack on the United States ("the September 11th Attacks"). The September 11th Attacks were the culmination of a campaign to wage jihad against the United States, set in motion with the formation of al-Qaeda in 1988 and made possible by the massive financial, logistic, and material support provided to al-Qaeda by its collaborators and ***9** sympathizers over a period of many years. That support allowed al-Qaeda to build the global infrastructure necessary to plan and conduct the September 11th Attacks.

Through their suits, plaintiffs seek to hold accountable the states, purported charities, banks, organizations and individuals who knowingly provided material support or resources to al-Qaeda, thereby making the September 11th Attacks possible. Plaintiffs' complaints assert claims under the Anti-Terrorism Act, Alien Tort Statute, Torture Victim Protection Act, and common law theories of concerted action liability. Plaintiffs initiated their respective actions between August 15, 2002 and September 2, 2004.

In presenting their substantive claims and theories of jurisdiction against the defendants, and in responding to the various motions to dismiss, plaintiffs offered detailed factual allegations in their respective complaints concerning the origins of al-Qaeda, the vast infrastructure that fueled that organization's growth and development, and al-Qaeda's systematic and public targeting of the United States and its citizens beginning in 1988. JA3775-78.[4] Within this broader framework, the ***10** pleadings described the particular character of the defendants' collaboration with al-Qaeda, and the nature of the material support and resources they provided to al-Qaeda in furtherance of its jihad against the United States. JA3602-3728, 3778-3876.

Plaintiffs in virtually all cases later filed one or more amended complaints, and numerous RICO Statements and/or More Definite Statements as to individual defendants, which served to amend their respective complaints.[5] Those supplemental pleadings offered additional details concerning the individual defendants' roles in supporting al-Qaeda, based largely on the flow of new evidence and information uncovered as a result of the intensive investigations initiated following the September 11th Attacks concerning the sources of al-Qaeda's vast financial and logistical support.

On December 9, 2003, the Judicial Panel on Multidistrict Litigation issued an order transferring the *Burnett* action from the District of Columbia to the Southern District of New York and consolidating all then-indicated, citations to the record refer to the docket numbers on the MDL 1570 docket sheet. ***11** pending cases against al-Qaeda's material sponsors and supporters arising from the September 11th Attacks. The September 11th MDL was assigned to Judge Richard Casey, who presided over the consolidated proceedings until his death on March 22, 2007. On April 20, 2007, the September 11th MDL was re-assigned to Judge George Daniels, who has since presided over the trial court proceedings.

Between 2002 and 2005, approximately 100 defendants entered appearances in the cases comprising the September 11th MDL and, with one exception, moved to dismiss the claims against them. In general terms, the defendants' motions sought dismissal principally under one or more of the following theories: (1) lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act (FSIA); (2) lack of personal jurisdiction; and/or (3) failure to state a claim.

In response to defendants' motions seeking dismissal for lack of personal jurisdiction and/or subject matter jurisdiction and under the Foreign Sovereign Immunities Act (FSIA), plaintiffs supplemented their already detailed allegations record relevant to those jurisdictional disputes through extrinsic information and evidence filed in support of their oppositions to the Defendants' motions to dismiss. These materials ***12** included, *inter alia*, governmental and intelligence reports, documents released in response to Defendants' Freedom of Information Act (FOIA) requests, U.S. filings in criminal trials, Congressional testimony, analyses authored by counterterrorism experts and think tanks, Treasury Department statements concerning designations of terror sponsors and supporters pursuant to Executive Order 13224, as well as relevant public reporting.

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On January 18, 2005, Judge Casey issued his decision in *Terrorist Attacks I*, dismissing claims against, *inter alia*, the Kingdom of Saudi Arabia and several Saudi Princes on sovereign immunity and personal jurisdiction grounds. Judge Casey held that the FSIA protected the Princes from claims arising from actions undertaken in their official capacities. SPA25. The decision also dismissed claims against Al Rajhi Bank in the *Burnett* action for failure to state a claim, a ruling that was then extended to the remaining MDL cases by Order dated May 5, 2005. SPA57, 2548-51.

On September 21, 2005, Judge Casey issued a second opinion, *Terrorist Attacks II*, dismissing claims in certain of the MDL cases against two additional Saudi Princes, again on FSIA and personal jurisdiction grounds, as well as claims against the Saudi High Commission for Relief of ***13** Bosnia & Herzegovina (SHC), a purported charity operating as an alter-ego of the Saudi government, also under the FSIA. SPA76-77, 81, 98.

On December 16, 2005, the district court certified as final pursuant to Rule 54(b) its orders of January 18, 2005, May 5, 2005, and September 21, 2005 with respect to the Kingdom, Princes, SHC, and several other defendants, but not as to Al Rajhi Bank. Docket # 1554.

Plaintiffs filed appeals as to the dismissals of the Kingdom, five Princes and SHC, and a panel of this Court issued a decision concerning those appeals on August 14, 2008. *Terrorist Attacks III*, 538 F.3d 71. Affirming the dismissals of the Kingdom and SHC, the Panel held that tort claims against foreign states for injuries resulting from a terrorist attack on U.S. soil may not be brought under the FSIA's non-commercial torts exception, 28 U.S.C. §1605(a)(5), but must instead be brought exclusively under the FSIA's so-called State Sponsor of Terrorism exception, 28 U.S.C. §1605A. *Id.* at 80-86. Because Saudi Arabia is not a designated State Sponsor of Terrorism, the Panel deemed the Kingdom and SHC immune from the September 11th plaintiffs' tort claims. *Id.* In also affirming dismissals of four of the Princes for conduct undertaken in their official capacities, the Panel ruled that individual foreign officials are entitled to ***14** the protections of the FSIA. *Id.* at 90-92. Finally, the Panel affirmed the dismissals of all five Princes for claims arising from their personal, nongovernmental activities, holding that the exercise of personal jurisdiction over them for the claims as pled would not comport with due process. *Id.* at 93-95.

Plaintiffs thereafter sought review by the U.S. Supreme Court of each of these three principal holdings. In response to a request from the Supreme Court, the United States filed an amicus brief on May 29, 2009, expressing its views that this Court's reasoning was flawed with respect to each of the holdings. Br. for the United States, *Federal Ins. Co. v. Kingdom of Saudi Arabia*, 2009 WL 1539068 (2009). With regard to the decision's due process analysis, the United States stated "[i]t is unclear precisely what legal standard the court of appeals applied in affirming the district court's holding that it lacked personal jurisdiction over the Princes for their personal actions .... To the extent the court of appeals' language suggests that a defendant must specifically intend to cause injury to residents in the forum before a court there may exercise jurisdiction over him, that is incorrect. It is sufficient that the defendant took 'intentional * * * tortious, actions' and 'knew that the brunt of th[e] injury would be felt' in the ***15** foreign forum." *Id.* at *19, (*quoting Calder v. Jones*, 465 U.S. 783, 789-790 (1984)). Even so, the United States argued that the questions presented by the Petition did not warrant review by the Court. *Id.* at *22. The Supreme Court denied the petition for review. *Federal Ins. Co. v. Kingdom of Saudi Arabia*, 129 S. Ct. 2859 (2009).

A few months later, the Supreme Court accepted review of another case raising the applicability of the FSIA to claims against individual foreign officials and unanimously held that the FSIA does not apply to individual officials of foreign states. *Samantar v. Yousuf, et al.*, 130 S. Ct. 2278 (2010). This Court subsequently acknowledged that *Samantar* "abrogated [*Terrorist Attacks III*] insofar as it held FSIA applied to individual officials." *Carpenter v. Republic of Chile*, 610 F.3d 776 (2d Cir. 2010).

Throughout the course of the prior appeals to this Court and related proceedings before the Supreme Court, approximately 90 initial Rule 12 motions remained pending before the district court. Following *Terrorist Attacks III*, the district court directed the parties to submit supplemental briefs concerning the import of that decision to the remaining motions to ***16** dismiss, as well as lists identifying those defendants' motions as to which the holdings in *Terrorist Attacks III* were dispositive.

In their submissions, plaintiffs conceded that *Terrorist Attacks III* was dispositive as to the immunity defenses asserted by the Saudi Red Crescent Society (SRC) and Saudi Joint Relief Committee for Kosovo and Chechnya (SJRC), two purported charity alter-egos of the Kingdom. As *Terrorist Attacks III* purported to resolve the entitlement of only *senior* foreign officials to FSIA immunity, plaintiffs asserted that the import of that holding as to the immunity defenses asserted by several

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remaining defendants, who allegedly held more junior positions in foreign governments, was unclear. Struggling to interpret the precise meaning of *Terrorist Attacks III's* personal jurisdiction holding, plaintiffs submitted that the decision could be interpreted as drawing a distinction between direct and indirect support of terrorism for due process purposes, and that *Terrorist Attacks III* should not be read to allow defendants with direct ties to al-Qaeda to evade jurisdiction. Plaintiffs expressly reserved their right to argue on appeal that, among other things, a rule immunizing indirect sponsors of terrorism from the jurisdiction of U.S. courts for injuries ***17** suffered in the United States on due process grounds is incorrect and inconsistent with controlling precedent.

For their part, the defendants asserted that *Terrorist Attacks III* should be read to require, for purposes of due process, a showing that the defendant "intentionally provided funding to support the September 11 attacks against the United States." R.2140, 1-2, 13.

On February 4, 2009, plaintiffs filed a Notice of Supplemental Authority bringing to the district court's attention the Seventh Circuit's decision in *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685, 693 (7th Cir. 2008 (en banc) (*Boim III*). R. 2156. In its decision, the Seventh Circuit comprehensively discussed the substantive liability standards governing civil claims under the ATA, and the findings and policies that prompted the Legislative and Executive Branches to establish a civil cause of action for the benefit of terror victims against material sponsors and supporters of terrorism. The *Boim III* court held that liability under the ATA extends to any person who knowingly or recklessly provided material support or resources to the terrorist organization responsible for the plaintiff's injuries, whether directly or indirectly, and that a plaintiff in an ATA case need not allege any specific or temporal link ***18** between the defendant's support and the attack producing the plaintiff's injury. *Id.* at 688-702.

On June 17, 2010, Judge Daniels issued an opinion, *Terrorist Attacks IV*, resolving the motions to dismiss of thirty-seven defendants, and holding that thirty-six of those defendants were entitled to dismissal for lack of personal jurisdiction. SPA152-211. The defendants dismissed through that decision included Appellees Abdullah bin Laden, Bakr bin Laden, Omar bin Laden, Tariq bin Laden, Yeslam bin Laden, Dallah Avco Trans-Arabia Co. Ltd. (Dallah Avco), DMI Administrative Services, Faisal Islamic Bank, Saleh al Hussayen, Yousef Jameel, Abdulrahman bin Mahfouz, Khaled bin Mahfouz, National Commercial Bank (NCB), Abdullah al Obeid (Obeid), Abdullah al Rajhi, Saleh al Rajhi, Suleiman al Rajhi, Schreiber & Zindel Treuhand Anstalt, Frank Zindel, Engelbert Schreiber, Sr., Engelbert Schreiber, Jr., Al Shamal Islamic Bank (Shamal), Abdul Rahman al Swailem (Swailem), Tadamon Islamic Bank (Tadamon), Abdullah Muhsen al Turki (Turki), Martin Wachter, Erwin Wachter, Sercor Treuhand Anstalt, and Asat Trust (Asat).

Generally, the district court predicated the dismissals of those Appellees on its conclusions that: (1) a defendant's indirect funding of al- ***19** Qaeda through a charitable intermediary "is, under controlling Second Circuit law, of no jurisdictional import," *see* SPA196; or (2) plaintiffs were required, but failed, to present allegations and facts sufficient to demonstrate the defendant's "specific intent that [his support for al-Qaeda] be used to aid al-Qaeda in the commission of a terrorist attack against the United States, *see* SPA197. In certain cases, the district court went further, appearing to require allegations or facts (or even evidence) directly linking the defendant to the September 11th Attacks. *See* SPA194.

On September 13, 2010, Judge Daniels issued another decision concerning the motions to dismiss for lack of personal jurisdiction of an additional seven defendants, and thirty-three defendants' motions to dismiss for failure to state a claim. SPA214-253 (*Terrorist Attacks V*, 740 F. Supp. 2d 494). The district court granted the motions of all seven defendants seeking dismissal for lack of personal jurisdiction, thereby dismissing Appellees Abdullah Naseef (Naseef), Sulaiman al-Ali (Ali), Adnan Basha (Basha), Jamal Khalifa (Khalifa), Aqeel Al-Aqeel (Aqeel), Yassin al Kadi (al Kadi), and Soliman al-Buthe (al-Buthe). SPA217-227. The reasoning in support of those dismissals generally followed that offered by the district court relative to the dismissals in *Terrorist Attacks* ***20** *TV*. As a component of its rulings dismissing two of the defendants-Appellees, the district court specifically held that a defendant's "terrorist designation" by the U.S. government for sponsoring al-Qaeda is insufficient to confer personal jurisdiction, *Terrorist Attacks V*, 740 F. Supp. 2d at 508, and that a defendant's status as "a key al Qeda operative" and direct participation in several al-Qaeda plots and attacks other than **9/11** was insufficient to establish jurisdiction absent an allegation that he "played any role in the **9/11** terrorist attacks" or "had authority to steward the direction of al-Qaeda's terrorist operation." SPA223. *Terrorist Attacks* Valso granted motions to dismiss for failure to state a claim, under the Anti-Terrorism Act, of Appellees Dar al-Maal-al Islami Trust (DMI Trust), Saleh Abdullah Kamel (Kamel), and al Baraka Investment and Development Corp (al Baraka). The dismissal was primarily based on the conclusion that plaintiffs did not adequately allege that those defendants knew, or recklessly disregarded, that

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the recipients of their support advanced al-Qaeda's activities -- despite plaintiffs' detailed pleading of defendants' extensive dealings with al-Qaeda and its network of supporting entities. The Court also granted particular defendants' motions ***21** to dismiss claims predicated on the Torture Victims' Protection Act, the Alien Tort Statute, RICO, and common law causes of action.

On October 7, 2010, the parties jointly requested that the district court enter Rule 54(b) final judgments in favor of all defendants dismissed through *Terrorist Attacks IV* and *Terrorist Attacks V*, as well as with respect to dismissals effectuated through the *Terrorist Attacks I* and *Terrorist Attacks II* decisions, to the extent not within the scope of the January 10, 2006 Rule 54(b) judgment. Seventy-five defendants fell within the scope of that joint request.

The district court granted the parties' joint request for entry of Rule 54(b) judgments on July 13, 2011, and the clerk of court entered final judgment in favor of the seventy-five defendants pursuant to Rule 54(b) on July 14, 2011. Plaintiffs in all actions filed timely Notices of Appeal as to all Rule 54(b) defendants within the scope of their respective actions.

Following the filing of plaintiffs' Notices of Appeal, this Court issued its decision in *Doe v. Bin Laden*, 663 F.3d 64, 2011 U.S. App. Lexis 22516 (2d Cir. 2011) (per curiam), another of the cases comprising the September 11th MDL. In *Doe*, the Court held that the FSIA's "terrorism exception, rather than limiting the jurisdiction conferred by the noncommercial tort ***22** exception, provides an *additional* basis for jurisdiction." *Id*. at *19 (emphasis added). Therefore, the Court concluded, "the noncommercial tort exception [§ 1605(a)(5)] can be a basis for a suit arising from the terrorist acts of September 11, 2001." *Id*. The Court remanded the case against Afghanistan for jurisdictional discovery. *Id*. at *20-21.

The Court recognized that its holding conflicted with and abrogated the prior panel's decision in *Terrorist Attacks III*, and noted that the Circuit had employed its mini-en *banc* procedure, whereby the new decision had been circulated to all active judges and had received no objections, including from members of the panel that decided *Terrorist Attacks III. Id*. at *19-20 n.10. *Doe*, therefore, is now the law of this Circuit, and *Terrorist Attacks Ill's* holding regarding § 1605(a)(5) has been overruled. *See Frontera*, 582 F.3d at 400 (applying the mini-en *banc* process and holding that "to the extent that" an earlier opinion "conflicts with our holding today ... it is overruled").

In light of *Doe*, plaintiffs moved this Court to summarily vacate the dismissals in favor of defendants' SRC, SJRC and NCB, and remand those claims for discovery, on the grounds that *Doe* abrogates and overrules the legal basis for those dismissals. Appellants' Motion to Summarily Vacate ***23** and Remand, Case No. 11-3294, Docket # 243, at p. 7. Those defendants sought and received an extension of time until January 23, 2012 to respond to that Motion, which remains pending as of the date of the filing of this brief.

In an effort to narrow the scope of these appeals, plaintiffs in all cases agreed voluntarily to withdrew the appeals as to twenty-two defendants.[6] Several additional non-dispositive stipulations of dismissal were filed in individual cases as to other Appellees. As a result, these appeals now focus on the dismissals for failure to state a claim of defendants Al Rajhi Bank, Saudi American Bank (SAMBA), DMI Trust, Kamel, and Dallah al Baraka, and the dismissals for lack of personal jurisdiction of defendants Abdullah bin Laden, Bakr bin Laden, Omar bin Laden, Tariq bin Laden, Yeslam bin Laden, Dallah Avco, DMI Administrative Services, Faisal Islamic Bank, Saleh al Hussayen, Yousef Jameel, Abdulrahman bin Mahfouz, Khaled bin Mahfouz, NCB, Obeid, Abdullah al Rajhi, Saleh al Rajhi, Suleiman al Rajhi, Schreiber & Zindel Treuhand Anstalt, Frank Zindel, Engelbert Schreiber, Sr., Engelbert Schreiber, Jr., Shamal, Swailem, Tadamon, Turki, Martin ***24** Wachter, Erwin Wachter, Sercor Treuhand Anstalt, Asat, Naseef, Ali, Basha, Khalifa, Aqeel, al Kadi, and al-Buthe. Disposition Below

As noted above, in *Terrorist Attacks I, Terrorist Attacks II, SAMBA I, DMI-Kamel, Terrorist Attacks IV*, and *Terrorist Attacks V*, the district court dismissed all claims against the defendant-appellees. Thereafter, the court entered partial final judgment pursuant to Rule 54(b). This brief addresses the district court's dismissals of plaintiffs' ATA, ATS, TVPA, and torts claims against Al Rajhi Bank, Saudi American Bank, DMI Trust, Saleh Abdullah Kamel, and Dallah al Baraka for failure to state a claim under Rule 12(b)(6), and dismissals of the Saudi Joint Relief Committee, Saudi Red Crescent Society, and National Commercial Bank for lack of subject matter jurisdiction under the FSIA.

Statement Of Facts

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The Origins of al-Qaeda

As alleged in plaintiffs' pleadings and confirmed by countless governmental investigations, al-Qaeda has its origins in the jihad against the Soviet occupation of Afghanistan, which served as a rallying point for ***25** Islamic extremists in the Middle East.[7] In 1980, Osama bin Laden traveled to Afghanistan to participate in the jihad, and gained prominence for his role in establishing the financial and logistical infrastructure that sustained the mujahedeen fighters.

Bin Ladin understood better than most of the volunteers the extent to which the continuation and eventual success of the jihad in Afghanistan depended on an increasingly complex, almost worldwide organization. This organization included a financial support network that came to be known as the "Golden Chain," put together mainly by financiers in Saudi Arabia and the Persian Gulf states. Donations flowed through charities or other non-governmental organizations (NGOs).[8]

Together with Abdullah Azzam, bin Laden founded the Maktab al Khidmat ("Office of Services") to facilitate the provision of financial and logistic support to the mujahedeen.[9] Throughout the Afghan jihad, Maktab al Khidmat worked in concert with a network of purported charities and relief organizations, including the Muslim World League ("MWL"), International Islamic Relief Organization ("IIRO"), Rabita Trust, Al Haramain Islamic Foundation ("Al Haramain"), Muwafaq Foundation ***26** ("Muwafaq"), and the Saudi Red Crescent Society, to provide travel documents, funds, transportation, training facilities, arms, physical assets and other support to the mujahedeen.[10] Fueled by donations from wealthy supporters in Saudi Arabia and the Gulf, this network of ostensible charities established a vast infrastructure to support the mujahedeen opposition to the Soviet occupation of Afghanistan.[11]

At the conclusion of the Afghan jihad, bin Laden determined that the network that supported the mujahedeen in Afghanistan should not be abandoned, but rather adapted to serve as a foundation for waging a global jihad against all of the perceived enemies of Islam, and in particular, the United States.[12] As the 9-11 Commission explained:

***27** April 1988 brought victory for the Afghan jihad. Moscow declared it would pull its military forces out of Afghanistan within the next nine months. As the Soviets began their withdrawal, the jihad's leaders debated what to do next.

Bin Ladin and [Abdullah] Azzam agreed that the organization successfully created for Afghanistan should not be allowed to dissolve. They established what they called a base or foundation (al Qaeda) as a potential general headquarters for future jihad.[13]

Once al-Qaeda was established, bin Laden turned its focus towards the United States. This was not done secretly, but rather publicly, in a series of *fatwas*. "Bin Ladin began delivering diatribes against the United States before he left Saudi Arabia [in 1991]. He continued to do so after he arrived in Sudan. In early 1992, the Al Qaeda leadership issued a jihad against the Western 'occupation' of Islamic lands...[s]pecifically singling out U.S. forces for attack."[14] In a 1996 *fatwa*, tellingly entitled "Declaration of War against the Americans Occupying the Land of the Two Holy Places," bin Laden asserted that "the occupying American enemy is the principle and the main cause of the situation. Therefore efforts should be ***28** concentrated on destroying, fighting and killing the enemy until, by the Grace of Allah, it is completely defeated." In 1998, bin Laden proclaimed to the world:

The ruling to kill Americans and their allies - civilians and military - is an individual duty for every Muslim who can do it in any country in which it is possible to do.[15]

These *fatwas* ensured that those who provided support to al-Qaeda knew and understood that al-Qaeda was directing its conduct at the United States.

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The Role of Ostensible Charities in al-Qaeda's Growth and Development

Consistent with bin Laden's plan to adapt the infrastructure developed during the Afghan jihad to build a global terrorist movement, al-Qaeda relied on the network of charities and wealthy individual donors established for the Afghan jihad to sustain its growth and development.[16] According to the United Nations Security Council Committee Concerning al-Qaeda and the Taliban:

From its inception al-Qaida has relied heavily on charities and donations from its sympathizers to finance its activities. Charities provide al-Qaida with a very useful international channel for soliciting, collecting, transferring and distributing the funds it needs for indoctrination, recruitment, training, and ***29** logistical and operational support. These funds are often merged with and hidden among funds used for other legitimate humanitarian or social programs. Al-Qaida supporters and financiers have also established front charity networks whose main purpose is to raise and deliver funds to al-Qaida. The roots of these charity networks stem from the anti-Soviet jihad in Afghanistan during the late 1980s. During that time, al-Qaida could draw on a number of state-assisted charities and other deep pocket donors that supported the anti-Soviet cause.[17]

As confirmed by internal al-Qaeda historical records seized during a 2002 raid of an al-Qaeda front charity, the partnerships forged during the Afghan jihad with the Muslim World League, International Islamic Relief Organization, and Saudi Red Crescent Society were among those seamlessly adapted to build and sustain the global infrastructure needed to support the planned jihad against the United States.[18] Additional "charities," such as al Haramain Islamic Foundation, Muwafaq Foundation, and the Saudi Joint Relief Committee, would emerge as important al-Qaeda partners as bin Laden's organization grew and expanded its global terrorist and military operations to regions as diverse ***30** as the Philippines, Bosnia, Chechnya, Kosovo, Sudan, Ethiopia, Kashmir, Somalia, Palestine, Pakistan, Yemen, Kenya, Tanzania, Egypt, Indonesia, and Malaysia.[19]

Plaintiffs' pleadings and other record materials describe in detail the pervasive involvement of these purported charities in knowingly and directly supporting al-Qaeda in the years preceding the September 11th Attacks.[20] As detailed in the record, the nature of the support provided by these organizations to al-Qaeda has taken many forms, and viewed collectively reflects their intimate, systematic, and longstanding ties to al-Qaeda. In this regard, plaintiffs' pleadings and extrinsic evidence demonstrate that these purported charities have: (1) raised and laundered funds on behalf of al-Qaeda; (2) channeled donated funds to al-Qaeda; (3) provided financial and logistical support and physical assets to al- ***31** Qaeda; (4) permitted al-Qaeda members to use ostensible employment with their organizations as a vehicle for covertly traveling in furtherance of al-Qaeda's operations; (5) performed reconnaissance within conflict regions on behalf of al-Qaeda; (6) served as liaisons to localized terrorist organizations on behalf of al-Qaeda, thereby assisting al-Qaeda in expanding its operational base and sphere of influence; (7) funded and facilitated shipments of arms and supplies to al-Qaeda; (8) funded camps used by al-Qaeda to train soldiers and terrorists; (9) actively recruited Muslim youths on behalf of al-Qaeda; (10) served as channels for distributing information and documentation within al Qaeda, and from al-Qaeda to the media; (11) disseminated publications designed to advance al-Qaeda's radical Islamist ideology throughout the Muslim world and legitimize violent jihad against Christians and Jews on the grounds that they are "infidels" who do not deserve to live; and (12) openly advocated for young Muslims to take up arms against Western and democratic societies.[21]

Contrary to the defendants' tireless efforts to cast plaintiffs' pleadings as conclusory, this Court commented in relation to a prior appeal in this ***32** proceeding that plaintiffs' allegations concerning the terrorist activities of the purported charities "include a wealth of detail (conscientiously cited to published and unpublished sources) that, if true, reflect close working arrangements between ostensible charities and terrorist networks, including al Qaeda." *Terrorist Attacks III*, 538 F.3d at 76.

Defendants Aqeel al Aqeel, Soliman al Buthe, Abdullah Naseef, Abdullah bin Saleh al Obaid, Abdullah Muhsen al Turki, Adnan Basha, Mohammed Jamal Khalifa, Abdulrhaman al Swailem, Suleiman al Ali (the "Charity Official Defendants"), Yassin al Kadi, and Abdulrahman bin Mahfouz served as senior officials of one or more of al-Qaeda's front charities, and are alleged to have used their authority over those organizations to orchestrate their material support and sponsorship of al-Qaeda.[22] Each of these defendants is specifically alleged to have acted with knowledge that the organizations under their control were channeling ***33** material support and resources to al-Qaeda, and that the support flowing to al-Qaeda from the organizations under their control would be used to support al-Qaeda's jihad against the United States.[23] These allegations are corroborated by the very nature and scope of the support flowing from the charities under defendants' control to al-Qaeda,

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which extended to separate branch offices throughout the world over a period of many years.[24] In many cases, these partnerships grew out of the charities' well publicized sponsorship of bin Laden and the mujahedeen in Afghanistan, a legacy which was well known to the heads of those organizations.[25] In the ensuing years, each of these purported charities was repeatedly and publicly implicated in terrorist activities, and yet their support for al-Qaeda continued unabated while under the leadership of defendants.[26]

In several instances, the Charity Official defendants were directly responsible for appointing senior al-Qaeda members to positions of authority within the purported charities, a pattern that further reflects the intimacy of the partnership between those organizations and al-Qaeda. For ***34** instance, while serving as the head of both the Saudi Red Crescent Society and Saudi Joint Relief Committee ("SJRC"), Defendant Dr. Abdul Rahman al Swailem appointed Wa'el Jelaidan to serve as Director of the SJRC's office in Pristina, Kosovo.[27] Jelaidan is a founding al-Qaeda member, whose ties to bin Laden date to the Afghan jihad when Jelaidan served as Director of the MWL's office in Peshawar, Pakistan and orchestrated that purported charity's support for the mujahedeen.[28] According to U.S. authorities, Jelaidan proceeded to use the SJRC as a front to "move money and men into and from the Balkans" for Osama bin Laden.[29] On September 6, 2002, the United States listed Jelaidan as a Specially Designated Global Terrorist pursuant to Executive Order 13224, explaining that "the United States has credible information that Wa'el Julaidan is an associate of Osama bin Laden and several of bin Laden's top lieutenants. Julaidan has directed organizations that have provided financial and logistical support to al-Qa'ida."[30]

***35** The leaders of the MWL and IIRO similarly ensconced well known bin Laden associates as senior officials of those organizations, thereby providing al-Qaeda with an efficient mechanism to support its global expansion. Defendant Abdullah Naseef met personally with Osama bin Laden around the time of Al-Qaeda's formation, and reached agreement with bin Laden at that meeting that al-Qaeda would use MWL offices to launch attacks.[31] This meeting and agreement are documented in the historical records of al-Qaeda's formation seized during the 2002 raid in Bosnia.[32] Naseef proceeded to leave Wa'el Jelaidan, who to Naseef's knowledge was responsible for directing the MWL's assistance for the Afghan mujahedeen and a founding al-Qaeda member, in his position as Director of the MWL, thus ensuring a direct channel for coordinating MWL's collaboration with al-Qaeda.[33]

***36** Around this same time, Naseef formed Rabita Trust, appointing Jelaidan to a senior position within that organization as well, as reflected by the Treasury Department's own press release concerning Rabita Trust's designation under Executive Order 13224 indicating that "Rabita Trust is headed by Wa'el Hamza Julaidan, one of the founders of al-Qaida with bin Laden. He is the logistics chief of bin Laden's organization and fought on bin Laden's side in Afghanistan."[34] In this regard, the MWL-headed Nassef retained Jelaidan as a director of its operations for several years following the establishment of al-Qaeda, despite his close ties to bin Laden and primary role in supporting the jihad in Afghanistan.[35] Jelaidan's role in the MWL allowed the nascent al-Qaeda organization to use the MWL as an "umbrella" under which the terror group's members could operate, including using MWL offices for launching terrorist attacks.[36]

Similarly, as head of the MWL, Naseef approved the appointment of Mohammed Jamal Khalifa, also a founding al-Qaeda member and bin Laden's brother-in-law, to head the Philippine office of MWL subsidiary ***37** IIRO.[37] Through that position, Khalifa used the IIRO as a platform for al-Qaeda's expansion into Southeast Asia, providing funds and other support through the IIRO for the 1993 World Trade Center bombing and the 1995 "Bojinka" plot to simultaneously bomb multiple airplanes while in transit to the United States.[38] The Bojinka plot was conceived by September 11th mastermind Khalid Sheikh Mohammed, and was a precursor to the September 11th Attacks.[39] Khalifa also used IIRO funds and resources to establish Abu Sayyef Group, a Philippine terrorist organization that has served as an al-Qaeda proxy in the Far East since its establishment.[40] Appellee Adnan Basha assumed control over the IIRO, after serving as a senior officer of its parent the MWL, in the immediate aftermath of the ***38** disclosure of IIRO's involvement in the aforementioned plots and terrorist activities, and proceeded to expand IIRO's support for al Qaeda by providing $60 million to fund al Qaeda training camps in Afghanistan, as confirmed by a 1996 CIA Report.[41]

The direct involvement of Appellee Aqeel and al-Buthe in orchestrating al Haramain's terrorist activities was also well documented. As defendant Aqeel himself stated, "[t]he [al Haramain branch] offices' directors are employees who follow directions of the main office with regards to hiring workers at the offices and making any decisions on cooperation with any party."[42] In designating Aqeel as a terrorist in 2005, the United States asserted that "[t]hese entities and this individual [defendant Aqeel] have provided financial, material and logistical support to the al-Qaida network, Usama bin Laden or the Taliban, fueling and facilitating their efforts to carry out vile acts against innocent individuals and the civilized world."[43] The

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Treasury Department further stated that ***39** Defendant Aqeel "controlled [al Haramain] and was responsible for all [al Haramain] activities, including its support for terrorism."[44]

On September 9, 2004, the United States Department of Treasury designated defendant Soliman al Buthe as a Specially Designated Global Terrorist for his role with al Haramain in the United States, which the Treasury Department stated had "direct links" with bin Laden.[45] Defendant al Buthe was also indicted on allegations that he diverted charitable donations from al Haramain to al-Qaeda fighters in Chechnya.[46] Al Buthe's role in directing al Haramain's activities are also revealed in the record which states that a "document obtained by the U.S. government shows that in October, 1997, [al Haramain] in Saudi Arabia appointed Al-Buthe its true and lawful attorney in its name, place, and stead" and "appears to give Al-Buthe broad legal authority to act on [al Haramain's] behalf within the United States."[47]

***40** Plaintiffs' allegation that defendant Yassin al Kadi co-founded Muwafaq Foundation with defendant Khalid bin Mahfouz for the specific purpose of serving as a front for al-Qaeda operations likewise enjoys support in the facts and allegations concerning al Kadi's appointment of known terrorists to head various Muwafaq offices.[48] For instance, al Kadi, himself a close associate of Jelaidan, appointed Chafiq Ayadi to head the Muwafaq operations in Europe and Bosnia.[49] On October 12, 2001, the United States listed Ayadi as a Specially Designated Global Terrorist.[50] Other Muwafaq offices throughout the world were similarly populated with al-Qaeda operatives, and al Kadi acknowledges having personally selected the managers responsible for running Muwafaq's various offices.[51] As a result of al Kadi's deep involvement in sponsoring al-Qaeda, through Muwafaq as well as various businesses under his control or influence, the ***41** United States listed him as a Specially Designated Global Terrorist on October 12, 2001.[52]

Read in context and collectively, the allegations concerning the charities' sponsorship of al-Qaeda while under the direction and control of the Charity Official defendants provide ample support for plaintiffs' specific contention that each of the these defendants played a direct role in facilitating the respective charities' sponsorship of al-Qaeda. In particular, the pleadings make clear that the charities embraced al-Qaeda's Islamist vision and used their global infrastructures to support al-Qaeda's jihad against the United States *as an institutional matter*.[53] The institutional character of the collaboration between al-Qaeda and the purported charities is reflected by the pervasiveness of their support, which followed a common pattern at separate branch offices throughout the world. In several cases, the Charity Official defendants enhanced their organizations' collaboration with al-Qaeda by appointing senior al-Qaeda officials to ***42** positions of authority within their organizations. Further, although the charities were repeatedly implicated in terrorist activities in the years following the formation of al-Qaeda, the pattern of sponsorship continued unabated under the direction and leadership of the Charity Official defendants for a period of many years, and in many cases even after the September 11th Attacks. These allegations, and the logical inferences arising therefrom, established for purposes of the jurisdictional disputes that the Charity Official defendants engaged in tortious conduct directed at the United States.

Al-Qaeda's Collaborators in the Financial Industry

Beyond the charity sector, al-Qaeda also benefited immensely from close working relationships with a number of financial institutions, many of which worked in concert with al-Qaeda's charity sponsors and supporters to facilitate the transfer of resources to al-Qaeda operations and affiliates through the international banking system.[54] By virtue of its own Islamist agenda, as well as for pragmatic reasons, al-Qaeda sought in particular partnerships with financial institutions operating under principles of Sharia compliant finance, and was successful in finding ***43** willing collaborators within that industry.[55] As the Council on Foreign Relations observed in its report on terrorist financing, "[m]any prominent Islamic banks operate under loose regulatory oversight, in part because they are based in jurisdictions without proper controls, but also because their religious nature often allows them a greater degree of autonomy owing to obvious domestic considerations. Islamic banks regularly co-mingle funds from depositors to place them within group investments by fund managers, creating ready opportunities for anonymous money transfers and settlements. Moreover, al-Qaeda and other terrorist groups that use Islam to justify their actions are also more likely to find willing collaborators within the Islamic banking system."[56] Al-Qaeda's willing collaborators within the financial industry included Defendants National Commercial Bank, Al Rajhi Banking and Investment Corp. ("Al Rajhi Bank"), Al Shamal Bank, Faisal Islamic Bank-Sudan, Tadamon Islamic ***44** Bank, DMI Trust, DMI Administrative Services S.A., Saudi American Bank, and Al Baraka Investment.[57]

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The character of support provided by al-Qaeda's sponsors in the financial industry also took several forms, but in every instance involved the knowing provision of financial services and other forms of material support to al-Qaeda. In certain cases, al-Qaeda officials were directly embedded in the infrastructures of those financial institutions, and al-Qaeda openly maintained accounts and carried out transactions with the knowledge and consent of senior officials of the financial institution in question. For example, during the period that al-Qaeda was headquartered in the Sudan under the protection of the ruling National Islamic Front regime, it openly used Defendants Al Shamal Islamic Bank ("Al Shamal") and Faisal Islamic Bank-Sudan ("FIBS") to support its operations and terrorist agenda.[58] (Together with Defendants DMI Administrative Services S.A. ("DMI") and Tadamon Islamic Bank ("Tadamon"), Al Shamal ***45** and FIBS are referred to herein as the "Sudanese Defendants"). According to the testimony of former al-Qaeda finance chief Jamal al Fadl, previously deemed credible by this Court,[59] Al Shamal maintained accounts for Osama bin Laden and several other al-Qaeda officials, and carried out large cash and wire transactions in furtherance of al-Qaeda operations.[60] Al Fadl similarly testified that FIBS, which in turn is the founder of Al Shamal, partnered with al-Qaeda by mamtaining accounts for al-Qaeda and by embedding al-Qaeda officials in the infrastructure of Al Shamal.[61] Tadamon also maintained accounts for al Qaeda members according to al Fadl, including an account for bin Laden's personal bodyguard, who handled money for bin Laden and used the account for bin Laden's activities on behalf of al Qaeda.[62]

More frequently, al-Qaeda's partners in the financial sector operated covertly within its global infrastructure, by providing financial services to al-Qaeda's charity fronts with full knowledge that those accounts were being used to support al-Qaeda, and by themselves providing funds to al- ***46** Qaeda, typically through their own *zakat* charitable contributions to al-Qaeda's charity fronts. The allegations and record evidence relating to Al Rajhi Bank and National Commercial Bank ("NCB") are illustrative of this pattern of support.[63] Testifying before Congress just three weeks after the September 11th Attacks, former Central Intelligence Agency Chief of Counterterrorism Operations Vincent Cannistraro affirmed that "[t]here is little doubt that a financial conduit to bin Laden was handled through the National Commercial Bank, until the Saudi government finally arrested a number of persons and closed down the channel. It was evident that several wealthy Saudis were funneling contributions to bin Laden through this mechanism."[64]

The "mechanism" through which "wealthy Saudis" channeled support to bin Laden via NCB involved large transfers to IIRO, Muwafaq Foundation, Saudi Red Crescent, SJRC and other al-Qaeda charity fronts.[65] Conveniently, NCB maintained accounts for many of these ostensible charities, including in particular IIRO and SJRC, and promoted ***47** contributions to those accounts via advertisements, with specific awareness that those entities were supporting al-Qaeda.[66] At all times, NCB was aware of the terrorist activities of those purported charities, by virtue of the extensive public reporting concerning those activities in the Muslim world prior to **9/11**, and by virtue of the longstanding ties between senior executives of NCB (including its Chairman Appellee Khaled bin Mahfouz and Appellee Yassin al Kadi, who was the architect of NCB's Islamic Banking Division), and bin Laden, as described in further detail below.[67] (Together with NCB and Abdulrahman bin Mahfouz, Khaled bin Mahfouz and Yassin al Kadi are referred to here is ahe "NCB Defendants.")

Al Rajhi Bank played an analogous and equally important role in al-Qaeda's financial infrastructure, by also providing financial services to al-Qaeda charity fronts including the MWL, IIRO, al Haramain, and Benevolence International Foundation.[68] In addition, Al Rajhi Bank funneled its own *zakat* contributions to al-Qaeda, via contributions to al- ***48** Qaeda's charity fronts.[69] Like NCB, Al Rajhi Bank was aware at all relevant times that MWL, IIRO, al Haramain and Benevolence International Foundation were fronts for al-Qaeda, again by virtue of the public reporting concerning the terrorist activities of those organizations, and because senior Al Rajhi Bank officials, including in particular the bank's founder Suleiman al Rajhi,[70] were themselves important al-Qaeda benefactors with direct ties to bin Laden dating from the Afghan jihad.[71]

Appellees DMI Trust and DMI S.A., in turn, sat at the apex of a deliberately decentralized financial network, which included Appellees Al Shamal, FIBS and Tadamon, established for purposes of "pursuing financial jihad." Functioning as the operational arm of DMI Trust and implementing the Trust's strategies and objectives, including its material sponsorship of al Qaeda, DMI S.A. handled accounts for al Qaeda members and primary financiers, including Wa'el Jelaidan and Yassin al Kadi, ***49** siphoned off charitable donations to support al Qaeda, and used its own *zakat* contributions to support al Qaeda.[72]

As referenced above, plaintiffs' pleadings and supplemental materials allege that support for al-Qaeda's agenda emanated

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from the founders and most senior officials of al-Qaeda's partners in the financial industry, many of whom had longstanding direct ties to bin Laden, and several of whom also held positions within al-Qaeda's charity fronts, thus placing them in a unique position to facilitate the provision of resources to al-Qaeda via the network of financial institutions and charitable organizations under their influence. In the case of Al Shamal, bin Laden was himself one of its major shareholders, having contributed $50 million in capital to the bank around the time he relocated al-Qaeda to the Sudan.[73] The Sudanese regime that invited bin Laden and al-Qaeda to Sudan also held a direct ownership in Al Shamal, as did Saleh Kamel, a wealthy patron of al-Qaeda's endeavors.[74] Al Shamal's Chairman was Adel Abdul Jalil Batterjee, a close bin Laden associate who also headed al-Qaeda charity ***50** fronts Benevolence International Foundation and its Saudi parent, Lajnat al Bir.[75] Batterjee's primary role in al-Qaeda's support infrastructure prompted the United States to list him as a Specially Designated Global Terrorist after the September 11th Attacks.[76]

Faisal Islamic Bank's leadership is similarly intertwined with the al-Qaeda organization. As is true of Al Shamal, the Sudanese regime that provided safehaven and support to bin Laden and al-Qaeda held a direct interest in Faisal Islamic Bank.[77] Its founders included Yousef Nada, another al-Qaeda financial patron designated by the United States pursuant to Executive Order 13224, and two of its Directors, Abdullah Omar Naseef and Amin Aqeel Attas, in turn were founders of Rabita Trust, an entity also designated by the United States under Executive Order 13224 based on its role in sponsoring al-Qaeda.[78]

***51** Tadamon and the DMI entities were similarly intertwined with al Qaeda's leadership and other members of al Qaeda's inner support circle. Osama bin Laden was himself a shareholder in Tadamon, and Tadamon's other shareholders included al Qaeda material sponsors FIBS, Saleh Kamel, Al Baraka Investment, Mohammed Hussein al Amoudi, and Dubai Islamic Bank.[79] DMI Trust appointed Hassan al Turabi, the noted Islamist leader of the National Islamic Front who invited bin Laden to the Sudan to build al Qaeda, to serve on its Board of Supervisors, and also held direct or indirect stakes in Al Shamal, FIBS and Tadamon.[80]

The pleadings similarly allege that al Qaeda's collaborations with NCB and Al Rajhi Bank were implemented by NCB Chairman Khaled bin Mahfouz and Al Rajhi Bank Managing Director Suleiman al Rajhi,[81] both of ***52** whom have direct ties to bin Laden.[82] Both bin Mahfouz and al Rajhi are identified as primary al-Qaeda sponsors on the "Golden Chain," a document discovered during a 2002 raid of the Bosnian offices of Benevolence International Foundation that uncovered a trove of internal documents on a computer hard drive.[83] After careful review of the materials, U.S. intelligence agencies concluded that they were internal al-Qaeda documents, chronicling the formation of al-Qaeda and details of its financial and organizational structure.[84] The Golden Chain document was found within this broader collection, and U.S. intelligence and law enforcement agencies have concluded that it is an authentic al-Qaeda document identifying al-Qaeda's most important financial benefactors, and the individuals responsible for coordinating their contributions to al-Qaeda.[85] The Golden Chain has been authenticated by former al-Qaeda ***53** finance chief Jamal al Fadl, and the Treasury Department has used inclusion on the list as a basis for designating individuals pursuant to Executive Order 13224.[86]

The authenticity of the Golden Chain as a list of al-Qaeda's most important financiers has been widely accepted. The **9/11** Commission Monograph on Terrorism Financing cites to "a group of wealthy donors from the Persian Gulf region known as the 'Golden Chain,' which provided support to ... Usama Bin Ladin."[87] The **9/11** Monograph continues:

The material seized [in Bosnia] included many documents never before seen by U.S. officials, such as the actual minutes of al Qaeda meetings, the al Qaeda oath, al Qaeda organizational charges, and the "Golden Chain" list of wealthy donors to the Afghan mujahideen....[88]

The Council on Foreign Relations Studies ("CRS") produced a report in October 2002 that also made use of the Golden Chain. Relying on the **9/11** Commission report, the CRS report described the Golden Chain as:

***54** an informal financial network of prominent Saudi and gulf individuals originally established to support the anti-Soviet Afghan resistance movement in the 1980s. U.S. officials state that this network collected funds and tunneled it to Arab fighters in Afghanistan, and later to Al Qaeda, using charities and other non-governmental organizations .... *Saudi individuals*

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and other financiers associated with the Golden Chain enabled bin Laden and Al Qaeda to replace lost financial assets and establish a base in Afghanistan following their abrupt departure from Sudan in 1996.[89]

The Golden Chain thus provides a list of the most significant donors to al-Qaeda. These donors, moreover, did not give money to al-Qaeda unwittingly, through an al Qaeda front masquerading as a legitimate charity; they were, rather, bin Ladin's original list of financial backers for his al-Qaeda enterprise. The appearance on this list of Khalid bin Mahfouz and Sulaiman al Rajhi is strong evidence of their knowing and active financial support of al-Qaeda.

In addition to the positions within their respective financial institutions, Khalid bin Mahfouz, Suleiman al Rajhi, and Abdullah al Rajhi also played significant roles in al-Qaeda charity fronts. As mentioned above, bin Mahfouz founded Muwafaq Foundation along with Defendant al Kadi, with the intent that it would serve as a front for al-Qaeda ***55** operations.[90] Al Rajhi served as a Board Member of the IIRO, and also founded the SAAR Foundation, a U.S. based charity established by al Rajhi to support Islamic extremists.[91] These allegations and facts concerning their longstanding ties to bin Laden, and positions within financial institutions and charities with documented links to al-Qaeda, place bin Mahfouz and al Rajhi at the center of the al-Qaeda financial and logistic network.

Al-Qaeda's Additional Wealthy Financiers

A number of other wealthy financiers and sponsors played critical roles in the advancement of the al-Qaeda enterprise, by providing much of the funding al-Qaeda needed to sustain its global operations, estimated by the U.S. government at more than $30 million per year in the period immediately preceding the September 11th Attacks.[92] These wealthy individual sponsors included defendants Bakr bin Laden, Tariq bin Laden, Yeslam bin Laden, Omar bin Laden, Abdullah bin Laden (collectively the "Bin Laden Brothers"), Yousef Jameel, and Saleh Kamel--Bakr bin Laden, ***56** Jameel, and Kamel, along with Khalid bin Mahfouiz and Suleiman al Rajhi, are identified as primary al-Qaeda financiers in the Golden Chain.[93]

Bakr, Tariq, Omar, and Yeslam bin Laden are Osama's half-brothers. Bakr, Tariq, and Omar are alleged to have used their positions within the Saudi Binladin Group, the bin Laden family construction empire, to channel support to their sibling Osama after he formed al-Qaeda and made clear his intent to conduct jihad against the United States.[94] Consistent with those allegations, the National Commission on Terrorist Attacks' Staff Monograph on terrorist financing confirms that Osama bin Laden continued to receive disbursements from SBG following the establishment of al-Qaeda in 1988 through 1993 or 1994, to a tune of approximately $1 million per year, until the Saudi government allegedly "forced the Bin Ladin family to find a buyer for Usama's share of the family company."[95] Bin Laden used those funds to provide economic support to the National Islamic Front regime, a central component of the bargain under which the ***57** NIF provided safehaven, training camps and other support for al-Qaeda.[96] In addition, Bakr is a member of the Golden Chain, and a primary contributor to al-Qaeda front charity IIRO.[97]

Abdullah bin Laden sponsored al-Qaeda through his roles in establishing two US branches of al-Qaeda front charities, Taibah International and WAMY USA, both of which have extensive ties to al-Qaeda.[98] Yeslam bin Laden supported al-Qaeda through the management of Swiss bank accounts for Osama's benefit.[99]

Defendants Kamel and Jameel also are members of the Golden Chain.[100] Both are alleged to have longstanding ties to al-Qaeda, and to have supported al-Qaeda through a variety of channels.[101] Jameel's sponsorship of al-Qaeda flowed largely through purported charities, known to Jameel to be al-Qaeda fronts.[102] Kamel also contributed generously to al-Qaeda through its known charity fronts, and also ***58** supported al-Qaeda through various businesses and financial institutions under his control, including Defendant-Appellee Dalian al Baraka.[103]

***59 Summary of Argument**

The district court concluded that plaintiffs had failed to state a claim against certain defendants under the Anti-Terrorism Act

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("ATA"), the Alien Tort Statute ("ATS"), the Torture Victims Protection Act ("TVPA"), and common law claims including negligence and various intentional torts. In each instance, the court mistakenly narrowed the scope of legal relief afforded by statute or the common law. In certain instances, it compounded that error by failing to give effect to plaintiffs' pleadings. And throughout, the court understated and failed to acknowledge the direct nexus between the persons who facilitate an act of international terror through the provision of funding or other support, the persons who personally plan and execute a particular terrorist attack, and the persons harmed by that attack.

All these errors were evident in the court's treatment of the ATA claims. Congress intended the ATA to provide relief broadly for U.S. citizens injured by an act of international terrorism, and the district court acknowledged that recovery could be predicated on the provision of material support to a terrorist organization such as al-Qaeda when the supporter knows the nature of the recipient. The court concluded, ***60** however, that plaintiffs had insufficiently pled facts establishing that defendants knew that it was al-Qaeda they were supporting. The court could reach this conclusion only by applying a clearly incorrect legal standard (requiring "extra-careful scrutiny" of terrorism allegations) and failing to acknowledge plaintiffs' extensive allegations of defendants' knowledge and facts making those allegations plausible. The court also failed to draw obvious, much less reasonable, inferences from plaintiffs' allegations that placed each defendant at the center of a web of dealings with al-Qaeda members and their closest associates, and it even weighed evidence at the motion to dismiss stage, discounting important documents that had been credited by the U.S. government and independent experts. And further, the court misconstrued and arbitrarily limited the ATA, and ignored plaintiffs' pleadings, in disregarding -- as "too remote" -- allegations that two defendants had provided extensive support to al-Qaeda in the mid-1990s.

The district court adopted different, but no less improper, narrowing constructions of the Alien Tort Statute and the TVPA. The Alien Tort Statute provides a cause of action for certain violations of international law, and the court concluded that the only relevant international law norm ***61** related to the hijacking of commercial airplanes. Plaintiffs had, however, pled that the relevant international law norm proscribes acts of international terrorism, which basic principles of customary international law, a considerable range of judicial decisions, and the determinations of Congress and the Executive Branch all establish as acts that violate international law for purposes of establishing an ATS claim. While plaintiffs perhaps did not adequately allege a nexus between defendants' acts and hijacking, their allegations were clearly adequate in relation to acts of international terrorism. Similarly, the TVPA permits terrorism-related claims to be brought against "individuals," which the district court construed as limited to natural persons and thus excluding commercial and other entities. That conclusion was incorrect, as this Court has already indicated, and in any event the U.S. Supreme Court is expected soon to offer definitive guidance on this point.

As to plaintiffs' common law claims, the district court declined to apply hornbook tort principles in concluding that defendants owed no "duty of care" to plaintiffs, who thus could not recover for claims predicated on Defendants' negligence. It also misapplied the statute of limitation to bar recovery on tort claims by certain plaintiffs. Although ***62** acknowledging that an adequately pled claim under the ATA (an intentional tort) would also suffice to establish the predicate for the common law intentional torts, the court failed as noted above to recognize that plaintiffs' ATA claims were more than amply pled. Its dismissal of those claims, too, was thus erroneous.

Finally, a change of law since the filing of notices of appeal requires *vacatur* of the district court's decision dismissing three defendants. The district court applied an aspect of this Court's decision in *Terrorist Attacks III* that has since been overruled by a subsequent decision as a result of this Circuit's "mini-en *banc*" process. Because those dismissals were based on the overruled portion of the opinion, and because the Court must apply current law to a pending appeal, the orders dismissing those defendants should be vacated so that the district court can apply current law to defendants' motions.

Standard of Review

The Second Circuit "review[s] *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Amaker v. N.Y. State Dep't of* ***63** *Corr. Servs.*, 435 F. App'x 52, 54 (2d Cir. 2011) (*quoting Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002)).

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Argument

I. The District Court Improperly Dismissed the Anti-Terrorism Act Claims

The Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333 *et seq.*, provides a cause of action for treble damages for those injured in their person, property, or business by acts of international terrorism, and it was designed especially for claims against material supporters of terrorist organizations. Plaintiffs allege that defendants knowingly provided just such material support to al-Qaeda, rendering them liable for injuries that plaintiffs suffered as a result of the September 11, 2001 attacks. The district court erroneously dismissed plaintiffs' ATA claims against Al Rajhi Bank,[104] Saudi American Bank,[105] Dar Al-Maal-Al-Islami Trust ("DMI ***64** Trust"),[106] Saleh Abdullah Kamel,[107] and Dallah al Baraka Group L.L.C. ("Dallah al Baraka").[108] It did so primarily on the ground that plaintiffs did not adequately allege that Defendants knew that the recipients of their support advanced al-Qaeda's activities -- despite plaintiffs' detailed pleading of Defendants' extensive dealings with al-Qaeda and its network of supporting entities. As shown below, the district court's rulings are based on fundamental legal errors regarding the standard of review and appropriate treatment of plaintiffs' allegations, misconstrue the ATA, and ignore plaintiffs' detailed pleadings that squarely place defendants at the heart of the network of persons and organizations that supported al-Qaeda.

A. The ATA Is Construed Broadly and Readily Encompasses Defendants' Alleged Conduct

The question whether a claim has been stated based on a statutorily-created cause of action turns on Congress's intent regarding the scope and operation of the cause of action. *Abrahams v. Young & Rubicam Inc.*, 79 F.3d 234, 237 (2d Cir. 1996). Congress without doubt intended the ATA to ***65** be construed broadly and to provide a cause of action based on conduct that includes the support provided to al-Qaeda alleged in the complaints and associated pleading materials in this case.

The ATA is directed at preventing and providing recovery for acts of material support to terrorism, broadly defined. Congress accomplished this purpose by "codify[ing] general common law tort principles and ... extend[ing] civil liability for acts of international terrorism to the full reaches of traditional tort law." *Boim v. Quranic Literacy Inst & Holy Land Found. for Relief and Dev.* (*Boim I*), 291 F.3d 1000, 1010-11 (7th Cir. 2002) (per curiam). The result was a "powerfully broad" Act that " 'impos[es] ... liability at any point along the causal chain of terrorism' " in order to " 'interrupt, or at least imperil, the flow of money' " to terrorists. *Id.* at 1011 (quoting S. Rep. 102-342, at 22 (1992) (quotation marks, emphasis, and citations omitted); *see also* Statement of Senator Grassley, 136 Cong. Rec. S4568-01 (1990), at S4593 ("With the enactment of this legislation, we set an example to the world of how the United States legal system deals with terrorists. If terrorists have assets within our jurisdictional reach, American citizens will have the power to seize them").

***66** Congress found it necessary to impose liability broadly because "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that *any contribution* to such an organization facilitates that conduct." Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 301(a)(7), 110 Stat. 1214, 1247 (1996) (enacting 18 U.S.C. § 2339B) (emphasis added); *see also Abecassis v. Wyatt*, 785 F. Supp. 2d 614, 645 (S.D. Tex. 2011) (finding that "Congress' clear intent" in the ATA was "to resist terrorism by cutting off the sources of funding to terrorist groups"). Such sources of funding include not only contributions to a terrorist organization, such as al-Qaeda, but also "funds [provided] 'under the cloak of a humanitarian or charitable exercise ....' " *Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp. 2d 609, 626 (E.D.N.Y. 2006)). This is because "[m]oney is fungible" and, as a result, funding for nonviolent activities "frees up other resources within the organization that may be put to violent ends." *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2725 (2010). Therefore, as recognized by the Supreme Court, "Congress's use of the term 'contribution' is best read to reflect a determination that any form of material support furnished 'to' a ***67** foreign terrorist organization should be barred, which is precisely what the material-support statute does." *Id.*

To these ends, the ATA broadly provides a civil cause of action for "[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism." 18 U.S.C. § 2333(a). "International terrorism" encompasses "violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State," and that "appear to be intended ... to intimidate or coerce a civilian population" or "to affect the conduct of a

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government by mass destruction, assassination, or kidnapping." *Id.* at § 2331(1). Such acts "transcend national boundaries in terms of the means by which they are accomplished ...." *Id.*

Defendants' alleged provision of material support to al-Qaeda and entities assisting its efforts readily falls within the ATA's scope. The district court did not dispute that plaintiffs adequately alleged that they were injured by acts of international terrorism. *See* SPA214 (*Terrorist Attacks V);* SPA1, 52 n.39 (*Terrorist Attacks I*). Those injuries arose from the terrorist attacks of September 11, 2001, which were attacks using means ***68** that transcend borders and that were intended to intimidate a civilian population and to affect the conduct of the United States Government.

Thus, plaintiffs allege that defendants are both primarily and secondarily liable under the ATA, and the district court analyzed the claims under both theories. *Compare* SPA237 (*Terrorist Attacks V*) (finding that plaintiffs allege claims of primary liability under the ATA), *with* SPA52-53 (*Terrorist Attacks I*) (analyzing plaintiffs' claims as alleging theories of secondary liability under the ATA). Primary liability is implicated because the plaintiffs' injuries arose from violations of federal criminal laws that proscribe material support of terrorists, including through financing and through furthering the transborder attack of Americans within the United States. *See* 18 U.S.C. §§ 2339A, 2339B, 2339C, 2332B. Courts have recognized primary liability under the ATA for providing financing to terrorist organizations, even when the financing is channeled indirectly through intermediaries. *See Boim v. Holy Land Found. for Relief and Dev.* (*Boim III*), 549 F.3d 685, 701-02 (7th Cir. 2008) (en banc) (holding that "donors to terrorism [cannot] escape liability because terrorists and their supporters launder donations through a chain of intermediate organizations"); *see also* ***69** *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1, 50-54 (D.D.C. 2010) (finding liability based on support provided to an agent of a terrorist organization). In addition, the organization receiving the support need only have a connection to terrorism. *Cf. Humanitarian Law Project*, 130 S. Ct. at 2717 ("Congress plainly spoke to the necessary mental state for a violation of § 2339B, and it chose knowledge about the organization's *connection to terrorism*, not specific intent to further the organization's terrorist activities") (emphasis added); *Boim III*, 549 F.3d at 702 (finding that Donor A cannot escape ATA liability by providing funds "to innocent-appearing organization B which gives to innocent-appearing organization C which gives to [a terrorist organization]").

Secondary liability under the ATA is present where defendants aid and abet those undertaking the terrorist act harming Americans. *See, e.g., Boim I*, 291 F.3d at 1010; *Wyatt*, 785 F. Supp. 2d at 645, 649; *Wultz*, 755 F. Supp. 2d at 54-57; *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571, 582-85 (E.D.N.Y. 2005). In this case, plaintiffs allege that the defendants are secondarily liable under the ATA because their financing and other support activities aided and abetted al-Qaeda in terrorism.

***70** Under both theories of liability, an ATA claim may be predicated on the provision of support without plaintiffs having to establish that the defendants sought to advance any particular terrorist attack -- or even terrorist activities generally -- by the entities or persons receiving that support. *See, e.g., Boim HI*, 549 F.3d at 692-95 (finding that a donor need only know the character of the terrorist organization to be liable under the ATA); *Wultz*, 755 F. Supp. 2d at 40-41; *Weiss*, 453 F. Supp. 2d at 625 ("The requirement that the defendant have specifically intended to further terrorist activities finds no basis in the statute's language"); *Humanitarian Law Project*, 130 S. Ct. at 2729 (money provided to a terrorist group for purportedly legitimate activities can be "redirected to funding the group's violent activities").

Here, with an exception applicable to discrete allegations regarding two defendants,[109] the district court acknowledged that plaintiffs, if they could establish that defendants acted with the requisite mental state,[110] adequately pled an ATA claim. *See supra* pp. 65-66 nn. 104-108. The district court also recognized that the ATA provides for recovery even if ***71** the defendants did not anticipate or intend the September 11th Attacks, because it was well known during the 1990s that al-Qaeda sought to commit terrorist acts against the United States. SPA237-38 (*Terrorist Attacks V*); SPA20, 50 (*Terrorist Attacks I*). Thus, merely providing material support to al-Qaeda or a related entity with the requisite state of mind would suffice to make the defendants liable for injuries caused by al-Qaeda's acts of international terrorism. *See* SPA237-39 (*Terrorist Attacks V*); SPA112-114 (*SAMBA II*); SPA110 (*DMI-Kamel*). This accords with the reasoning of other courts that have addressed ATA claims. *See, e.g., Boim III*, 549 F.3d at 693-94; *Wultz, 755* F. Supp. 2d at 50-53; *Weiss*, 453 F. Supp. 2d at 627 n.15.

In sum, under a theory of secondary liability, the attacks are attributed to defendants based on their support for al-Qaeda and its affiliated entities and efforts to advance its objectives. Under a theory of primary liability, the defendants' provision of support to al-Qaeda and its affiliated entities makes them directly responsible for the resulting, entirely foreseeable terrorist

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attacks.

***72 B. The District Court Erred In Finding that Plaintiffs Failed to Plead that Defendants Knowingly or Recklessly Provided Support for Terrorism**

The district court faulted plaintiffs' pleadings and dismissed their ATA claims against Al Rajhi Bank, Saudi American Bank, Saleh Abdullah Kamel, Dallah al Baraka, and DMI Trust principally based on a conclusion that plaintiffs failed to state a claim with respect to a single narrow element of the ATA cause of action: the defendants' state of mind in the course of providing support to al-Qaeda. Under a theory of either primary or secondary ATA liability, a defendant is liable if it "either knows that the organization engages in [terrorist] acts or is deliberately indifferent to whether it does or not, meaning that one knows there is a substantial probability that the organization engages in terrorism but ... does not care." *Boim III*, 549 F.3d at 693 (by analogy, giving "a small child a loaded gun would be a case of criminal recklessness and therefore satisfy the state of mind requirement") (emphasis omitted); *see also Wultz*, 755 F. Supp. 2d at 50-51, 57 (finding that plaintiffs sufficiently pled that defendant had the requisite mental state to be both primarily and secondarily liable for providing banking services to a terrorist organization when plaintiffs alleged that the bank was warned by the Chinese government that its ***73** services were being used by terrorists); *Weiss*, 453 F. Supp. 2d at 613-14 & n.4, 627 n.15 (finding that aiding and abetting liability was sufficiently pled based on allegation that defendant bank "had reason to know" that its clients were supporting terrorism). The district court held that plaintiffs' pleadings did not adequately establish that defendants knew or had reason to know that their support, through financing and the provision of services, was being provided to persons and entities advancing al-Qaeda's efforts. *See* SPA237-39 (*Terrorist Attacks V*); SPA112-114 (*SAMBA II*); SPA110 (*DMI-Kamel*); SPA57-58 (*Terrorist Attacks I*).

In determining that plaintiffs' pleadings were conclusory and inadequate, the district court misapplied fundamental legal principles governing the assessment of a complaint and related pleadings upon a motion to dismiss. It also dramatically understated or disregarded the scope, detail, and logic of plaintiffs' pleadings. Four principal errors infected the district court's analysis: (1) the district court adopted and applied a heightened pleading standard for defendants accused of supporting terrorism, disregarding the well-established Rule 12 and Rule 8 standards and ignoring Congress's intent regarding the ATA's scope and operation; (2) the district court understated and overlooked plaintiffs' ***74** extensive pleading allegations regarding defendants' knowing and reckless support for al-Qaeda, which were far from conclusory and provided extensive detail; (3) the district court failed to draw all reasonable inferences from plaintiffs' pleadings taken as a whole, which sufficiently alleged and clearly supported an inference regarding defendants' scienter through allegations of (a) direct support for the world's most notorious terrorist organization, al-Qaeda, (b) the publicly-known terrorism associations of the charities and entities defendants supported, and (c) defendants' proximity to, range, and pattern of dealings with entities essential to the al-Qaeda network; and (4) far from accepting the truth of the facts alleged by plaintiffs, the district court assessed and rejected certain evidence underlying plaintiffs' claims, and considered and credited evidence to the contrary.

1. The District Court Applied an Incorrect, Heightened Standard In Evaluating Plaintiffs' Pleadings.

The district court's entire analysis of plaintiffs' ATA allegations was tainted by its use of an erroneous legal standard to assess the adequacy of plaintiffs' pleadings. A pleading need only provide a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, a complaint must ***75** contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quotation marks omitted). A claim is facially plausible if it includes "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The district court, however, applied a heightened standard of scrutiny to plaintiffs' pleadings, one that has no basis in the Federal Rules and one that it created out of whole cloth exclusively for claims related to terrorism. The court found that due to "the extreme nature of the charges of terrorism, fairness requires extra-careful scrutiny of plaintiffs' allegations as to any particular defendant, to ensure that he -- or it -- does indeed have fair notice of [the claims]." SPA55 (*Terrorist Attacks I*) (emphasis added, brackets in original, and quotation marks and citation omitted); *accord* SPA108 (*DMI-Kamel*); SPA100 (*SAMBA I*). Not only is this departure from the Federal Rules a fundamental legal error, but it also accounts for and explains

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why the district court disregarded and failed to credit plaintiffs' extensive, entirely adequate pleadings, *see infra* Point I.B.2; failed to draw reasonable inferences from those pleadings, *see infra* ***76** I.B.3; and declined to accept the truth of the facts alleged by plaintiffs, *see infra* Point LB.4.

Application of this heightened standard is especially misguided in light of Congress's intent that the ATA reach just the conduct that plaintiffs allege. That is, "Congress[] clearly expressed [an] intent to cut off the flow of money to terrorists at every point along the causal chain of violence." *Boim I*, 291 F.3d at 1021. Congress did this by "attach[ing] liability to all donations to foreign terrorist organizations regardless of the giver's intent" because "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." *Id.* at 1027. Moreover, Congress enacted Section 2339B, a criminal provision incorporated through the ATA, out of a "concern that terrorist organizations could raise funds 'under the cloak of a humanitarian or charitable exercise.' " *Weiss*, 453 F. Supp. 2d at 626 (quoting H.R. Rep. 104-393, at 43 (1995)). That statute was designed to " 'severely restrict the ability of terrorist organizations to raise much needed funds for their terrorist acts within the United States.' " *Id.* Any effort to impose a heightened pleading standard upon terrorism-related ***77** cases, as the district court did, thus "thwart[s] Congress' clearly expressed intent." *Boim I*, 291 F.3d at 1021.

2. The District Court Understated and Ignored Plaintiffs' Extensive Pleadings Addressing Defendants' Knowing and Reckless Support of Terrorism.

Although the district court acknowledged that plaintiffs had in certain respects pled that the defendants knowingly provided support to al-Qaeda,[111] it radically understated the scope and detail surrounding those direct allegations. Far from presenting bare conclusions, plaintiffs abundantly provided defendants with notice of the basis for plaintiffs' claims, including their assertion that defendants sought to advance al-Qaeda's activities.

For each defendant, plaintiffs' detailed allegations focused on the knowing or reckless nature of the provision of support to al-Qaeda. The particular allegations set forth below are in addition to plaintiffs' extensive allegations regarding the broader context of al-Qaeda's use and development of a financing network, the relation between the key financiers and financing mechanisms and al-Qaeda's operations, and the integration of sources of financing into the broader social and ideological ***78** network of persons and organizations that facilitated al-Qaeda's activities. *See supra* pp. 29-60.

(a) Al Rajhi Bank

Al Rajhi Bank was founded in 1987 and "has a network of nearly 400 branch offices throughout Saudi Arabia and seventeen worldwide subsidiaries." SPA55 (*Terrorist Attacks I*). Plaintiffs' complaints contain numerous allegations that Al Rajhi Bank knowingly provided an extensive amount of material support to al-Qaeda front charities, including the International Islamic Relief Organization ("IIRO"), the Muslim World League ("MWL"), the World Association of Muslim Youth ("WAMY"), the Benevolent International Foundation ("BIF"), the Saudi Joint Relief Committee ("SJRC"), and Al Haramain Islamic Foundation ("Al Haramain"). *See* SPA55 (*Terrorist Attacks I*); JA1062-65, 1069-77, 3827-29. Its provision of material support included "knowingly and intentionally provid [ing] financial and bank account services" for al-Qaeda front charities and "September 11th hijacker Abdulaziz al-Omari." JA1062-77, 1784, 2483, 3827-29.[112] "Al Rajhi Bank has long known that the[se] ***79** accounts ... were being used to solicit and transfer funds to terrorist organizations, including al Qaida." JA3828. Through these bank accounts, Al Rajhi Bank "knowingly and intentionally ... facilitated [the] purchase of weapons and military equipment." JA2483. Al Rajhi Bank also "knowingly and intentionally lent repeated material support to Al Qaeda," including the front charities, "through, *inter alia*, the use of interstate and international faxes, telephones, wire transfers and transmissions, and mailings." JA1064, 1784.

The complaints further allege that Al Rajhi Bank knowingly provided material support through its involvement in raising funds for al-Qaeda's front charities, including by making direct donations to them, JA1068-73, 2483, guiding the donations of its customers, JA1069-70, cooperating with the charities to advertise the existence of their bank accounts, XXXXXX, and managing and accounting for donations, JA1071. Donations were often made as part of the Islamic duties of *zakat* and *haram*, which include an obligation by the donor "to determine" (*i.e.*, know) that "the ultimate ***80** recipients of these

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contributions fall within one of the categories prescribed in the Quaran ...." *See infra* p. 98-99; JA1068-73, 2483. Moreover, by advertising these accounts, Al Rajhi Bank "provid[ed] a mechanism to allow al Qaida's supporters to deposit funds directly into those accounts." JA3828.

Al Rajhi Bank's operations are consistent with their support of al-Qaeda front charities. In 1999, Al Rajhi Bank was warned by United States government officials "that their financial systems were being manipulated or utilized to fund terrorist organizations such as Al Qaeda." SPA55 (*Terrorist Attacks I*); JA 2584-86; *infra* pp. 93-95. "Despite these warnings, Al Rajhi failed to adopt even the most minimal standards, [which] resulted in the use of Al Rajhi as an instrument of terror ..." SPA55 (*Terrorist Attacks I*). By ignoring the most basic banking standards "designed to thwart the support of terrorist networks," such as "anti-terrorist money laundering safeguards and 'know your customer' regulations," Al Rajhi Bank willfully turned a blind eye towards the true nature of these charities. JA2483.

***81 (b) Saudi American Bank[113]**

Plaintiffs' complaints allege that Saudi American Bank has knowingly provided various forms of material support to al-Qaeda. For example, "Saudi American Bank knowingly provided material support and resources to al Qaida" by "finance [ing] many of the projects undertaken by Osama bin Laden and al Qaida in the Sudan during the years that the al Qaida leadership structure operated from that country ...." JA843-44, 3843. This included projects such as "the construction of major roads and the Port of Sudan airport." JA3843.

Saudi American Bank is also alleged to have "knowingly provided financial services and other forms of material support to al Qaida." JA3844. It did this by "maintain[ing] accounts for many of the ostensible charities that operate within al Qaida's infrastructure, including MWL, WAMY, IRO and al Haramain" with "know[ledge] that [these] accounts ... were being used to solicit and transfer funds to terrorist organizations, including al ***82** Qaida." JA843-44, 3843-44. "Saudi American Bank also serve[d] as the Saudi Arabia correspondent for many other banks within at Qaida's infrastructure ...." JA843-44, 3844.

Plaintiffs further allege that "Saudi American Bank facilit[ated] al Qaida's fundraising efforts" by "advertis[ing] the existence and numerical designation of the accounts it maintain[ed] for those charities throughout the Muslim world, and provid[ing] a mechanism to allow al Qaida supporters to deposit funds directly into those accounts." JA3844. These actions were alleged to have been done "[i]n cooperation with the charities operating within al Qaida's infrastructure ...." JA3844. Also, plaintiffs allege that in "2000, the Saudi American Bank participated in the fund raising campaign in Saudi Arabia for collecting donations to the 'heroes of the Al Quds uprising' (Intifada) by providing a bank account and facilities to receive donations for a committee of charity organizations including [WAMY], [IIRO,] and al Haramain Foundation." JA844. In addition, plaintiffs allege that "from 1996 through 2001, the Saudi American Bank funneled money to and/or from the Spanish al Qaida cell." JA4385.

***83 (c) Saleh Abdullah Kamel and Dallah al Baraka**

Plaintiffs' complaints allege that Saleh Abdullah Kamel, a Saudi businessman, has knowingly provided extensive material support to al-Qaeda, both individually and through his various business entities, including Dallah al Baraka. JA3869-70. For example, the complaints allege that Kamel personally "has made substantial contributions to many of the charities operating within al Qaeda's infrastructure, with full knowledge that those funds would be used to support al Qaida's operations and terrorist attacks." JA3869-70. He is also alleged to have "long provided financial support and other forms of material support to terrorist organizations," such as al-Qaeda. JA3162. Kamel's role as a key financial supporter of al Qaeda's is confirmed by his inclusion on the Golden Chain. JA3164; *see infra* pp. 109-10. One such contribution is alleged to have occurred in 1992, when Kamel donated $100,000 to Sanabil Al-Khair, the North American financial arm of the IIRO. JA3125. In addition, complaints allege that through personal investments, Kamel has provided financial support to publicly identified terrorist organizations, including by means of *zakat* donations requiring Kamel's authorization. JA3173-74, 3193, 3200, 3869-70.

***84** The complaints further allege that "Kamel financed and developed Dallah al Baraka and its subsidiaries to operate as profitable banking and investment institutions and to serve as financial vehicles for transferring millions of dollars to Islamic militants around the world." JA3162, 3869-70. In fact, plaintiffs allege that "[t]he practice and policy of Dallah Albaraka ...

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[was] to provide financial support and material assistance to international terrorist organizations including al Qaeda." JA821. This support is alleged to have begun in 1982, when both Kamel and Dallah al Baraka "direct[ed] tens of millions of dollars in funds to at least 20 non-governmental organizations, including Osama bin Laden's Mekhtab al Khidmat, the predecessor to al Qaeda ...." JA3162. Dallah al Baraka is also alleged to have "knowingly and intentionally lent material support to Al Qaeda through, *inter alia*, the use of interstate and international faxes, telephones, wire transfers and transmissions, and mailings." JA1782, 3116. Additionally, Dallah al Baraka is alleged to have "knowingly and intentionally ... maintained and serviced bank accounts held by ... Al-Haramain whose funds were earmarked and transferred to Al Qaeda." JA1783. Dallah al Baraka also is alleged to have "provided material support for terrorism," by "consistently and constantly launder[ing] ***85** money" and "engag[ing] in illegal transactions in monetary instruments." R.1233, p. 3. Both Kamel and Dallah al Baraka are additionally alleged to have "continue[d] to maintain joint investments, shares, finances, and correspondent bank accounts with [Al Shamal Islamic Bank] even after it was widely known that the bank was materially supporting international terrorism and that Osama bin Laden was a major investor in the bank." JA3128.

Plaintiffs further allege that beginning in 1983, Dallah al Baraka "facilitated jihad operations in the world [by] providing Osama bin Laden with financial infrastructures in Sudan ...." R.1233, Ex. A, p. 7. Dallah al Baraka also is alleged to have entered into "joint 'symbiotic business' investments" with "al Qaeda['s] network of front companies, farms and factories in Sudan." JA3135-36. And Kamel and Dallah al Baraka are alleged to have provided material support to the Spanish al-Qaeda cell, which directly funded the September 11, 2001, attacks, by permitting their use of an Al Baraka Bank Finance House in Turkey to transfer money to Osama bin Laden's courier in Europe, Mohamed Bahaiah. JA3148.

In addition, plaintiffs' complaints allege that Dallah al Baraka's wholly-owned subsidiary and financial arm, Al Baraka Investment and ***86** Development Company ("ABID Corp."), often acting through subsidiaries over which ABID Corp. "exercised control and direction," "has knowingly maintained accounts" for al-Qaeda front charities, including IIRO, MWL, WAMY, BIF, and al Haramain. JA1782, 3832; R.1233, Ex. A, p.6. ABID Corp. "has long known that the[se] accounts ... were used to solicit and transfer funds to terrorist organizations, including al Qaida." JA3832. ABID has also "facilitate[d] al Qaida's fundraising efforts by "advertis[ing] the existence and numerical designations of the accounts it maintains for th[e]se charities throughout the Muslim world, and provid[ing] a mechanism to allow al Qaida's supporters to deposit funds directly into those accounts." JA3832. These actions were done "[i]n cooperation" with the charities in question. JA3832. Plaintiffs' complaints also allege that Kamel and ABID Corp. engaged in a scheme to purchase and export sesame products with businesses they "knew or should have known" were "owned and operated by Osama bin Laden." JA3137.

(d) Dar-Al-Maal Al Islami ("DMI") Trust

The complaints allege that as one of the central banking entities used by Saudi Arabia beginning in the early 1980s to "channel[l massive financial support for the spread of ... the radical brand of Islam at the heart ***87** of the al Qaida ideology," DMI Trust "directly and through its subsidiaries and affiliates, knowingly provided material support and resources to al Qaeda and/or affiliated individuals and entities." JA3833, 4331. One such company is DMI Trust's wholly owned and directly controlled subsidiary, DMI Administrative Services S.A. ("DMI S.A."), which "puts into action the investments, strategies, distributions, and policies of the DMI Trust through direct assistance to al Qaeda." JA4985; Companion Brief at Point I.B.2.(b)(iii).

Such support is alleged to have taken the form of "laundering money for al Qaeda, knowingly and intentionally providing financial services to al Qaeda (including mamtaining and servicing al Qaeda bank accounts and accounts used to fund and support al Qaeda), and/or facilitating weapons and military equipment purchases and money transfers for al Qaeda." JA2569, 4986-87. DMI Trust is alleged to have utilized its "*zakat* [and *haram]* accounts ... to support al Qaeda ... [and] transferred money for Al Haramain." JA2569-70, 2594-95. Plaintiffs additionally allege that "DMI [Trust] and its affiliated and subsidiary companies have known that many of the ostensible charities to which they channeled *Zakat and Haraam* funds were, in fact, fronts for al Qaeda [, including IIRO and MWL]." ***88** JA4337. "Despite the actual knowledge that money contributed to these charities was being used to support terrorist activities, DMI and its affiliates and subsidiaries continued to send funds to these charities in the form of *Zakat and Haraam* contributions on their own behalf and on behalf of their investors, depositors and account holders." JA4338.

Pleadings allege not only that DMI Trust acted through its wholly owned companies, but that those companies have

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"facilitated financial transactions for, and advertised, maintained and serviced accounts on behalf of, several of al Qaeda's known charity fronts, including Al Haramain ..., [IIRO,] and [MWL]." JA4331. One such company that DMI Trust is alleged to have exercised "direct involvement" over is Faisal Islamic Bank of the Sudan. JA4331. Through this company and others, DMI Trust is alleged to have "entered into business partnerships with prominent al Qaeda supporters, such as the National Islamic Front, the fundamentalist regime which has ruled Sudan since 1989 and provided safe haven to Osama bin Laden and al Qaeda from 1991 through 1996." JA4331. Specifically, Faisal Islamic Bank, and thus DMI Trust, is alleged to have provided loans and other support to the National Islamic Front and its prominent members. JA4332-33. Faisal Islamic Bank is also alleged to ***89** have "actively participated in the collection of funds for certain of al Qaeda's 'charitable' front organizations." JA4337-38.

Another "wholly owned subsidiary, Faisal Finance," is alleged to have "knowingly and intentionally" held and managed accounts for multiple al-Qaeda operatives, including Wa'el Julaidan and Yasin Al Kadi, who were both designated by the U.S. Department of Treasury as Specially Designated Global Terrorists. JA3723. Plaintiffs allege that in 1998, Al Kadi's account was identified by "the FBI's Counter Terrorism Task Force ... as being a source of funding for Hamas terrorist, Mohamed Saleh" and it "was one of the accounts frozen after September 11, 2001." JA3823-24. Moreover, under DMI Trust's control, Faisal Finance continued to provide these services even after Osama bin Laden publicly acknowledged his close ties to Julaidan in 1999. JA3723. Similarly, Tadamon Bank, another DMI Trust subsidiary, has "knowingly and intentionally lent repeated material support to Al Qaeda through" the provision of "financial and bank account services to several Al Qaeda operatives." JA1789-90, 4335, 5915.

90** ***3. The District Court Failed to Draw Reasonable Inferences From Plaintiffs' Extensive Additional Pleadings Establishing Defendants' Knowing and Reckless Support of Terrorism.

Further, plaintiffs presented extensive additional allegations that permitted -- indeed, compelled -- reasonable inferences that each defendant knew or recklessly disregarded whether the recipients of their funds and services were in fact advancing al-Qaeda's efforts. Far from applying the rule that a court must draw "all reasonable inferences" in favor of the plaintiff when resolving a motion to dismiss, *Matson v. Bd. of Educ. of the City Sch. Dist. of N.Y.*, 631 F.3d 57, 72 (2d Cir. 2011), the district court declined to draw even the most straightforward inferences about mental state from the extensive allegations of defendants' actions directed toward al-Qaeda and its closest supporters. Plaintiffs' allegations, taken as a whole, place defendants at the core of the network that supported al-Qaeda, including through direct provision of funds and services to al-Qaeda itself; extensive dealings with the most notorious and widely known charities, related organizations, and individuals who are prominently involved in global jihad and supporting al-Qaeda; and a pattern of dealing with and assisting the persons and entities most closely associated with al-Qaeda. An inference of mental state is almost always derived from ***91** circumstantial evidence, and here that evidence pervasively and consistently points to the conclusion that defendants knew that their support advanced the efforts of al-Qaeda. Alternatively, at a minimum, plaintiffs' allegations establish that only a person deliberately oblivious to the nature of the parties involved, which is the essence of recklessness, could have failed to understand that the alleged actions were supporting terrorism.

(a) Reasonable inference based on provision of support to al-Qaeda, a notorious terrorist organization.

The defendants are alleged to have "provided critical financial and logistical support to al Qaeda in relation to that terrorist organization's global jihad." JA3834, 3843-44, 3870, 4314, 4331. Defendants' provision of material support to al-Qaeda came at a time when that terrorist organization was publicly, even notoriously, known to have declared its intent to "wage war with the United States." JA3153, 3777. Moreover, al-Qaeda had taken credit for numerous terrorist attacks that were among the most highly publicized on the planet. As the district court noted, the terrorist organization had "publicly acknowledged responsibility for, such terrorist schemes as the 1993 bombing of the World Trade Center, the 1998 attack of the U.S. embassies in Kenya and Tanzania, and the 2000 attack of ***92** the U.S.S. Cole in Yemen." SPA20, 50 (*Terrorist Attacks I*) (quotation marks and citations omitted). In addition, President Bill Clinton signed an Executive Order on August 21, 1998, that "block[ed] the assets of Osama bin Laden and his terrorist cells, including Al Qaeda, as international terrorists." JA1065-66.

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These allegations and al-Qaeda's notorious nature make plain the district court's failure to draw a reasonable inference that the defendants had the requisite mental state of knowingly or recklessly advancing the efforts of a terrorist organization, where the pleadings contained detailed allegations that they provided material support to al-Qaeda. A stark example is the district court's failure to infer that Al Rajhi Bank knew or had reason to know that it was providing financial services to al-Qaeda, despite plaintiffs' allegations that United States government officials -- "William Weschler of the National Security Council and Richard Newcomb of the Office of Foreign Assets Control" -- warned Al Rajhi Bank in 1999 "that their financial systems were being manipulated or utilized to fund terrorist organizations such as Al Qaeda." SPA55 (*Terrorist Attacks I*); JA1080-81. The district court simply noted that plainti ffs failed to allege "Al Rajhi Bank implemented 'know your customer' rules that Al Rajhi ***93** failed to follow with respect to accounts held by the Defendant charities." SPA57 (*Terrorist Attacks I*).

The district court's holding is not only inconsistent with *Wultz*, 755 F. Supp. 2d at 50-5, where the court inferred that the Bank of China knowingly provided financial services to a terrorist organizations based on allegations that it had been issued a warning by a Chinese official, but also is inconsistent with its own later decision. There, plaintiffs alleged that Dubai Islamic Bank provided banking services to al-Qaeda, even as the United States government had provided warnings to the United Arab Emirates in 1999. SPA199-200 (*Terrorist Attacks IV*). These allegations, the district court concluded, "g[a]ve rise to the inference that [Dubai Islamic Bank] intentionally and knowingly assisted al Qaeda by providing banking services ...." *Id.* at 205. Similarly, the allegations against Al Rajhi Bank draw the reasonable inference that it, too, knowingly assisted al-Qaeda.

(b) Reasonable inference based on provision of support to charities known to be fronts for al-Qaeda.

It is also reasonable to infer defendants' mental state based on allegations of material support to al-Qaeda front charities that were intimately involved in the al-Qaeda network and publicly known as such. The complaints allege that charities have "played a singularly important ***94** role in al Qaida's development and pursuit of its perverse ambitions ... [and] have served as the primary vehicle for raising, laundering and distributing funds on behalf of al Qaida from its inception." JA3778. According to the United Nations, the main purpose of al-Qaeda front charities was "to raise and deliver funds to al-Qaida." JA3778-79. And, as a 2002 independent commission on financing of international terrorism reported:

> [T]he most important source of al Qaeda's money is its continuous fundraising efforts. Al Qaeda's financial backbone was built from the foundation of charities .... In many communities, the *zakat* is often provided in cash to prominent, trusted community leaders or institutions, who then commingle and disperse donated moneys to persons and charities they determine to be worthy. These widely unregulated, seldom audited, and generally undocumented practices have allowed unscrupulous actors such as al Qaeda to access huge sums of money over the years. Today al Qaeda continues to raise funds from both direct solicitations of wealthy supporters and through retail charities. Some, whose donations go to al Qaeda, know full well the terrorist purposes to which their money will be put.

JA791.

The pleadings allege that it was widely and publicly known prior to September 11, 2001 that the charities supported by defendants were actually fronts for al-Qaeda. JA2483-84. For example, in September 1998, al Haramain was banned from Kenya for its involvements with the ***95** bombing of United States embassies in both Kenya and Tanzania. JA2483. WAMY was identified as having been involved with the 1993 World Trade Center bombing. *Id.* MWL was known to have ties to a 1995 assassination attempt on Egyptian President Mubarak and the 1998 bombings of United States embassies. *Id.* IIRO was implicated for its "involvement with terrorist attacks and plots in Bosnia, the Philippines, Croatia, Kenya, India, Macedonia, Jordan, India, and the 1993 World Trade Center bombing ...." JA2483-84. SJRC "publicly discussed [its] involvement with terrorist attacks in Albania, Kosovo, Egypt, Tanzania and Kenya ...." JA2484. And, BIFs was publicly linked with "terrorist activities in Chechnya, the Sudan, Bosnia and the Philippines," and its manager in Sudan had been arrested "under suspicion of ties to al Qaida." *Id.*

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The pleadings further allege that the relationship between these charities and al-Qaeda's terrorism was widely known and publicly reported. Throughout the 1990s, numerous media reports and statements by government officials disclosed similar facts, including the terrorist activities of al Haramain, IIRO, and WAMY. JA 2596-97, 4337-38, 7891-94. For example, a major Egyptian newspaper, *Rose Al Yusuf*, reported in late 1992 "that the IIRO and the Bin Laden Organization in Egypt recruited and ***96** sponsored more than 700 Arab operatives to travel to Afghanistan to train as jihadist terrorists." JA2596. International media reported "that the Cairo office of the IIRO was managed by the bin Laden family and Mohamad Showki Al Istanbul, who was sentenced to death in Egypt for his Islamic extremist activities." *Id.* Another newspaper reported that "[t]he IIRO was shut down by Egyptian authorities later in 1993 or early 1994 as a result of the charity's links to Osama Bin Laden." *Id.* An article in *Rose Al Yusuf* provided:

> Working with Palestinian Islamist Shaykh Abdallah Azzam, Bin-Ladin set up the 'Jihad and Relief" guesthouse in Peshawar to receive volunteers who would arrive after a short stop in the al-Ansar guesthouse in Jeddah. The route of this process passed through the unlicensed Cairo office of the [MWL], directed by Dr. Abdallah Umar Nasif.

JA2596-97. In addition, public testimony from a high-level al-Qaeda operative prior to September 11, 2001, "described how Osama Bin Laden's brother-in-law, convicted terrorist and IIRO employee, Jamal Khalifa, opened a [MWL] office in Pakistan for the use of the founders of al Qaeda to recruit, train and equip al Qaeda terrorists." JA2597.

Moreover, it is entirely reasonable to conclude that the defendants were aware of these facts based on their obligation under the Koran to ***97** inquire into the source of their *zakat* and *haram* donations, many of which went to al-Qaeda front charities. *See supra* 47-48, 50-51, 81-82, 85, 89-90, 96; JA1070-71. That is, "[t]he Quran requires every Muslim, individuals and corporations, to give Zakat for specific charitable purposes identified in the Quaran." JA1062. Muslims are also required to donate their *haram* income, which is money derived from sources such as earned interest or "impure activities such as gambling or the sale of liquor." JA1063-64. To ensure that their *zakat* and *haram* contributions "satisfy their religious obligations under Islam," entities making the contributions are "required to determine that the ultimate recipients ... fall within one of the categories prescribed in the Quran ...." JA1070.

It is commonplace for courts to infer a defendant's mental state from surrounding facts when analyzing a Rule 12(b)(6) motion to dismiss. *See, e.g., In re Chiquita Brands Int'l, Inc.*, 690 F. Supp. 2d 1296, 1310 (S.D. Fla. 2010) (" 'knowledge may be inferred from circumstantial evidence' ") (quoting *Schneberger v. Wheeler*, 859 F.2d 1477, 1480 (11th Cir. 1988)); *Foster v. Auburn Univ.*, No. 11-CV-503, 2011 U.S. Dist. LEXIS 141056, at *11-12 (M.D. Ala. Dec. 8, 2011) (finding that factual allegations gave rise to reasonable inference that defendant engaged in intentional conduct); *Med-* ***98** *Sys. v. Masterson Mktg.*, No. 11-CV-695, 2011 U.S. Dist. LEXIS 135216, at *19-20 (S.D. Cal. Nov. 23, 2011) (same); *U.S. Bank Nat'l Ass'n v. Verizon Commc'ns, Inc.*, No. 10-CV-1842, 2011 U.S. Dist. LEXIS 106657, at *12-16 (N.D. Tex. Sept. 19, 2011) (same); *Redding v. Edwards*, 569 F. Supp. 2d 129, 132 (D.D.C. 2008) (same); *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257, 291 (E.D.N.Y. 2007) (same). Even in the context of criminal prosecutions under Sections 2339A and 2339B, courts have held it proper to infer a defendant's mental state based on circumstantial evidence. *See, e.g., United States v. El-Mezain*, No. 09-1560, 2011 U.S. App. LEXIS 24216 (5th Cir. Dec. 7, 2011) (finding that "it was logical for the jury to conclude that the defendants' inten[ded] ... to support Hamas" as "the evidence strongly supported the inference that the defendants were connected to Hamas"); *United States v. Augustin*, 661 F.3d 1105, 1121 n.7 (11th Cir. 2011) (finding that "there is ample circumstantial evidence of [the defendant's] knowledge of Al Qaeda and its terrorist activities"); *United States v. Kassir*, No. 09-CR-356, 2009 U.S. Dist. LEXIS 83075, at *21-22 (S.D.N.Y. Sept. 11, 2009) (finding that evidence "allowed the jury to infer that [the defendant] intended the jihad training to benefit al Qaeda").

***99** An inference that the defendants possessed the requisite mental state is particularly reasonable where, as here, the plaintiffs allege that the charities supported by the defendants were publicly known to have been involved in terrorist activities and to be affiliated with al-Qaeda. *See Wyatt*, 785 F. Supp. 2d at 647-48; *see also Goldberg v. UBS AG*, 660 F. Supp. 2d 410, 428-29 (E.D.N.Y. 2009) (finding that plaintiffs had "sufficiently pled that the defendant consciously disregarded the fact that it was supporting a terrorist organization" when various forms of public information suggested "that

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[the recipient] was funneling money to terrorist organizations"); *Strauss v. Credit Lyonnais, S.A.*, No. CV-06-0702, 2006 U.S. Dist. LEXIS 72649, at *47-49 (E.D.N.Y. Oct. 5, 2006) (drawing a reasonable inference that a bank "had reason to know" one of its customers was a terrorist group based on "public investigations of" the group and discussions within the press). In *Wyatt*, the district court drew upon public awareness that Iraq supported suicide bombers in Israel to "infer that ... the defendants knew the[ir kickbacks to Iraq] would be used for that purpose." 785 F. Supp. 2d at 647-48. And in *Weiss*, the district court inferred that defendants "had reason to know the activities of its clients because of its legal and self-imposed obligations to know its customers." ***100** 453 F. Supp. 2d at 627 n.15. Here, the facts alleged establish a general public awareness that the front charities supported by the defendants had been involved in acts of terrorism and actively aided al-Qaeda, and that the defendants had an obligation to know the source of their donations. These allegations give rise to a reasonable inference that defendants possessed the requisite mental state under the ATA, namely, that they knew or had reason to know the entities they supported were fronts for al-Qaeda.

(c) Reasonable inference based on defendants' extensive relationship with the al-Qaeda network.

The plaintiffs also provided sufficient allegations connecting the defendants to the center of al-Qaeda's network of terrorism, and individuals in the midst of al-Qaeda's network are more likely to be part of al-Qaeda and at least well placed to know the nature of its activities. *See Al-Adahi v. Obama*, 613 F.3d 1102, 1109-10 (D.C. Cir. 2010) (finding that petitioner's "close connection to the al-Qaida leadership ... strengthened the probability that he was part of al-Qaida"), *cert. denied*, 131 S. Ct. 1001 (2011). As such, it is entirely reasonable to infer, based on plaintiffs' allegations as a whole and in considering a motion to dismiss, that defendants provided material support to al-Qaeda with the requisite knowledge. *See id.* at 1105 (finding that a district court erred by analyzing ***101** evidence individually, as opposed to holistically, to determine whether the petitioner was a member of al-Qaida, because certain patterns of behavior increase the likelihood that an individual is a member of the terrorist organization); *see also Salahi v. Obama*, 625 F.3d 745, 753 (D.C. Cir. 2010) (the court "must view the evidence collectively rather than in isolation"). As the quantity and significance of a defendant's dealings and contacts with notorious members and supporters of al-Qaeda increase, it becomes at least reasonable to conclude that a defendant actually knows who his associates are. Plaintiffs' allegations far exceed that threshold.

For example, the pleadings allege that the chairman and managing director of Al Rajhi Bank, Suleiman Abdel Aziz Al Rajhi, was a member of IIRO's board of directors and "directly participate[d] in the management, funding and operation of ... MWL and IIRO." JA3827-28. The pleadings also allege that while Abdul Aziz Al-Khereiji served as an executive on Al Rajhi Bank's board of directors, he "was also a Director of a terrorist front, Muwaffaq Limited." JA1078-79. In addition, plaintiffs allege that "[d]irectors and advisory members of Al Rajhi [Bank] and its Shariah Boards share directorships and advisory positions with [al-Qaeda front] charities ...." JA1079. One such individual was alleged to be Sheik ***102** Abdallah bin Abd-al Rahman al Basam, who "simultaneously served as chairman of the Sharia Supervisory Committee in the IIRO, and as a member of the Sharia Committee of the al Rajhi Bank. He was also a member of the Holy Qura Committee of the [MWL]." JA2484-85.

Plaintiffs' allegations were corroborated by The Wall Street Journal report of the extensive contacts between Al Rajhi Bank and al-Qaeda:

> Islamic extremists have used Al-Rajhi Banking & Investment Corporation (ARABIC) since at least the mid-1990s as a conduit for terrorist transactions, probably because they find the bank's vast network and adherence to Islamic principles both convenient and ideologically sound. Senior al-Rajhi family members have long supported Islamic extremists and probably know that terrorists use their bank. Reporting indicates that senior al-Rajhi family members control the bank's most important decisions and that ARABIC'S principle [sic] managers answer directly to Suleiman. The al-Rajhis know they are under scrutiny and have moved to conceal their activities from financial regulatory authorities.

JA7882.[114] Based on these allegations, Al Rajhi Bank had reason to know of the charities' "extensive sponsorship of al

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Qaida's operations, and consequently that the accounts maintained by Al Rajhi Bank on behalf of ***103** those organizations were being used to channel funds to al Qaida." JA3828.

Plaintiffs made further allegations connecting the Al Rajhi family, "which owns and controls Al Rajhi Bank," to al-Qaeda, including that they have ties to Osama bin Laden's personal secretary, are major donors to the SAAR network, and are closely associated with wealthy donors to Osama bin Laden identified on the Golden Chain. SPA56 (*Terrorist Attacks I*); JA1081-85; Companion Brief at Point LB.2(c). The district court found such allegations to be insufficient because plaintiffs did not also provide "allegation[s] that the family members were acting in furtherance of Al Rajhi Bank business." SPA57 (*Terrorist Attacks I*). The district court missed the point entirely, though, in focusing on the family members' *actions* and whether they furthered the bank's business. As the D.C. Circuit found in *Al-Adahi*, these allegations of the family members' *affiliations* and *patterns of behavior* paint a mosaic revealing intimate involvement with al-Qaeda. As a result, these allegations support a reasonable inference that defendants' provision of material support to al-Qaeda was done either knowingly or recklessly.

***104** The district court made the same error in finding insufficient allegations that Al Rajhi Bank provided material support to Hamas and other terrorists, including through provision of funds to Tulkarm Charity Committee, a known front for Hamas. SPA56-57 (*Terrorist Attacks I*); JA1077-79. Plaintiffs also alleged that Al Rajhi Bank hosted its website with Infocom, a Texas-based company owned and operated by Mousa Marzook, a Hamas leader and designated terrorist. SPA56 (*Terrorist Attacks I*); JA1077-78. Infocom has provided funding to Hamas, and Al Rajhi Bank has made transfers from its accounts to Marzook and Infocom. SPA56 (*Terrorist Attacks I*). The district court found these allegations to be insufficient to support the ATA claim on the ground that "[p]laintiffs have not alleged any relationship between Hamas and al Qaeda or the terrorist attacks of September 11." *Id.* at 57. Again, this ignores that such allegations provide greater support for an inference that Al Rajhi Bank had the requisite mental state when providing material support to al-Qaeda, because associates of terrorists tend to be aware of and involved in numerous activities of terrorists.

Allegations against the other defendants provide support for the same inference. The pleadings allege that Saudi American Bank has a close ***105** relationship with the Saudi Bin Laden family and "directly and materially supported Hamas, Palestinian Islamic Jihad, and other terrorist groups in that region" by "participat[ing] in the scheme to fund terrorists in Gaza and the West Bank." *Id.* at 58; JA3089.

DMI Trust is alleged to have served as one of the central banking entities that, beginning in the early 1980s, Saudi Arabia used to "channel[] massive financial support for the spread of Wahhabism, the radical brand of Islam at the heart of the al Qaida ideology" by "provid[ing] material support and resources to al Qaeda ...." JA3833, 4331. The pleadings also allege that DMI Trust has extensive relationships with al-Qaeda and its closest operatives. For example, DMI Trust is the parent company of Islamic Investment Company of the Gulf, which is the parent of Al Shamal Bank. JA2570. Osama bin Laden helped establish Al Shamal Bank in 1991 by providing capital of $50 million, and it has since held accounts for numerous al-Qaeda operatives. JA2570-71. Adel Baterjee, a wealthy Saudi businessman and close associate of Osama bin Laden, is the chairman of Al Shamal Bank. JA2587. All of DMI Trust's entities are chaired by Price Mohamed al-Faisal al-Saud, a known collaborator of al-Qaeda, who has "engaged in the sponsorship of international terrorism through [DMI ***106** Trust], the Faisal Islamic Bank and Al Shamal Bank." JA902, 2584. DMI S.A., the wholly owned and controlled subsidiary of DMI Trust, owns 100% of Islamic Investment Company of the Gulf, for which Mohamed al-Faisal al-Saud was the Chairman and Haydar Mohamed Bin Laden, the brother of Osama bin Laden, was a Director, and which is the main shareholder of Faisal Islamic Bank (Sudan). JA832, 2562. DMI Trust also appointed Hassan Abdallah Al Turabi, who has "embrace[d] an ideology of violence ...[,] promote[d] violent jihad ...[,] and encouraged radical Islamic terrorist groups such as al Qaeda" as a supervising Board of Director. JA2576-82. Youssef al-Karadawi, "the spiritual leader of the Muslim Brotherhood who promotes the ... philosophy of jihad" and "has been barred from entering the [United States] since November 1999 for his alleged support of terrorism and affiliations with al-Qaeda associates[,]" has served as a "member of the Religious Board of DMI Trust ...." JA2590-92.

In addition, the pleadings allege that Saleh Abdullah Kamel "established Dallah Al Baraka as a central house for Islamic terrorism when al Qaeda first started carrying out attacks against the United States." JA4314. Saleh Abdullah Kamel visited Sudan in 1991 with Saudi officials ***107** and businessmen -- including Yassin Al-Qadi, who was named as a Specially Designated Global Terrorist on October 12, 2001 -- and entered into "symbiotic business" investments with Osama bin Laden's entities and the government of Sudan. JA3132. Saleh Abdullah Kamel was also listed as a board member for IIRO's

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office in Washington, DC, and he was reported to have "major investments" in Bank Al-Taqwa, a notorious Specially Designated Global Terrorist. JA3125-26, 3146. Dallah al Baraka "is a shareholder of Aqsa Islamic Bank, a bank that Israel has refused to approve, 'citing obvious ties with known terrorists.' " SPA60 (*Terrorist Attacks I*).

Both Saleh Abdullah Kamel and Al Rajhi Bank's chairman and managing director, Suleiman Abdel Aziz al Rajhi, are alleged to have been identified in the "Golden Chain" document as one of al-Qaeda's principal financiers. JA3164, 3866-67, 3869-70; *see also supra* pp. 56-60. United States intelligence agencies concluded that the seized materials were authentic al-Qaeda documents that chronicle the formation of al-Qaeda, detail its financial and organizational structure, and identify al-Qaeda's most important financial benefactors and the individuals responsible for coordinating their contributions. *See supra* at pp. 54-55 nn.85-86. Jamal al ***108** Fadl, a senior al-Qaeda official who defected and became a cooperating witness for the United States, has authenticated the Golden Chain document. *See supra* at 55 n.86. The Treasury Department has used inclusion on that list as a basis for designating individuals as terrorist sponsors and for freezing their assets under Executive Order 13224. *Id*. The Golden Chain has been relied upon by the United States as an exhibit in multiple criminal cases. *See supra* at pp. 54-55 nn.85-86. And, the **9/11** Commission's Final Report also relied upon the Golden Chain. *See supra* pp. 25-26 & n.8.

These allegations, taken together, detail an extensive relationship between the defendants and al-Qaeda, giving rise to a reasonable inference that the defendants' provision of material support to al-Qaeda was knowing or, at the very least, reckless. The reasonableness of this inference is supported by the D.C. Circuit's judicial review of habeas petitions brought on behalf of Guantanamo Bay detainees. *See, e.g., Al Alwi v. Obama*, 653 F.3d 11 (D.C. Cir. 2011); *Uthman v. Obama*, 637 F.3d 400 (D.C. Cir. 2011); *Al-Adahi*, 613 F.3d at 1102; *Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 1814 (2011). In order to have a basis to continue to detain a petitioner, the United States has been required to ***109** prove that a detainee was "more likely than not ... part of, or substantially supported, Taliban or al-Qaida forces or associated forces ...." *Al Alwi*, 653 F.3d at 15. This inquiry is fact specific and has required the court to infer, based on circumstantial evidence, a petitioner's state of mind -- whether he was "part of" al-Qaeda. *See, e.g., id*. at 17-18; *Uthman*, 637 F.3d at 407 ("[I]t remains *possible* that Uthman was innocently going about his business ... [but] the far more likely explanation for the plethora of damning circumstantial evidence is that he was part of al Qaeda"); *Salahi*, 625 F.3d at 751-52 ("[T]he determination of whether an individual is 'part of al-Qaida must be made on a case-by-case basis by using a functional rather than a formal approach and by focusing upon the actions of the individual in relation to the organization" (quotation marks and citations omitted)).

The standard employed by the D.C. Circuit is substantially more rigorous than that required in the present case, both because the United States must establish its case by a preponderance of evidence (rather than the pre-discovery, prima facie showing required here), and because the issue is whether a defendant actually served as "part of" al-Qaeda (rather than whether it simply provided knowing support to al-Qaeda). *Compare Al Alwi*, 653 F.3d at 15 (government must put forward evidence proving ***110** that the petitioner was "more likely than not ... part of, or substantially supported, ... al-Qaida"), *with Iqbal*, 129 S. Ct. at 1949 (plaintiffs' allegations need merely "allow [] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"), *and Boim III*, 549 F.3d at 693 (required mental state under the ATA is whether defendant "kn[ew] that the organization" to which he provided material support "engage[d] in [terrorist] acts or [wa]s deliberately indifferent to whether it d[id]").

Even applying this more stringent standard, the D.C. Circuit has consistently found that habeas petitioners were "part of" al-Qaeda. *See Al Alwi*, 653 F.3d at 18 (collecting cases). For example, in *Al-Bihani*, the court held that an individual's presence at "Al Qaeda training camps in Afghanistan" or "Al Qaeda guesthouses ... overwhelmingly, if not definitely, justif[ies] the government's detention ...." 590 F.3d at 873 n.2. In *Uthman*, the court looked at a variety of factors, including that the petitioner had attended a religious school where al-Qaeda had recruited fighters and "traveled to Afghanistan along a route used by al Qaeda recruits," to reach the same conclusion. 637 F.3d at 403-04. And, on numerous occasions, the D.C. Circuit has reproached the district court for ***111** its failure to draw reasonable inferences from a petitioner's contacts with those associated with al-Qaeda. *See, e.g., Al Adahi*, 613 F.3d at 1109-10 (finding that the district court "committed ... the fallacy of the possible proof" in declining to infer that the petitioner had a close relationship with al-Qaeda's leadership based on the possibility that the evidence showing his deep knowledge of al-Qaeda's leadership *could* have been learned some other way); *Salahi*, 625 F.3d at 753 (finding that petitioner's limited relationships with al-Qaeda operatives did not "independently ... prove that he was 'part of' al-Qaida, those connections make it more likely that [he] was a member of the organization ... and thus remain relevant to the question of whether he is detainable").

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Thus, even in that more rigorous context, the D.C. Circuit has squarely rejected the approach taken by the district court here (ignoring the context of a defendant's alleged actions and examining each allegation in isolation). For example, the habeas cases repeatedly find that an inference of al-Qaeda membership may be drawn from a pattern of dealing with persons associated with al-Qaeda or from sharing characteristics with those persons. *See Uthman*, 637 F.3d at 407 (circumstantial evidence, in the form of repeated dealings with al-Qaeda, sufficient to establish membership) ***112** (collecting cases). As the D.C. Circuit held, such "evidence tend[s] to show [the detainee's] close relationship with these men and thus strengthen[s] the probability that he was part of al-Qaida." *Al Adahi*, 613 F.3d at 1109; *accord Uthman*, 637 F.3d at 407 ("[detainee's] actions and recurrent entanglement with al Qaeda show that he more likely than not was part of al Qaeda"). Just as clearly, the D.C. Circuit has recognized that courts "must view the evidence collectively rather than in isolation." *Salahi*, 625 F.3d at 753. "Merely because a particular piece of evidence is insufficient, standing alone, to prove a particular point does not mean that the evidence 'may be tossed aside and the next [piece of evidence] may be evaluated as if the first did not exist.' " *Id.* (quoting *Al-Adahi*, 613 F.3d at 1105) (brackets in original).

4. The District Court Vailed to Accept the Truth of the Tacts Alleged.

In considering a motion to dismiss, courts are of course under an obligation to "assume the[] veracity" of the plaintiffs' factual allegations and to view them "in a light most favorable to the plaintiff." *Iqbal*, 129 S. Ct. at 1950; *Matson*, 631 F.3d at 72. In addressing crucial allegations bearing directly on defendants' state of mind, the district court failed to follow these basic principles.

***113** For example, when analyzing the claims against Al Rajhi Bank, the district court rejected the truth of plaintiffs' allegations, and instead, accepted Al Rajhi Bank's version of events. After recounting plaintiffs' allegation that Al Rajhi Bank had a duty to inquire into the recipients of their *zakat* donations, the district court noted that Al Rajhi Bank "submits it did not have a duty, or a right, to inspect the ... charities' financial transactions to ascertain the ultimate destination of its donations." SPA56 (*Terrorist Attacks I*). The district court continued, "Al Rajhi Bank contends it had a legal and religious duty to make its charitable donations and any terrorist activity by the recipient charities was unknown to Al Rajhi Bank." *Id.* The district court then concluded that the "[p]laintiffs do not offer facts to support their conclusions that Al Rajhi Bank had to know that ... [the recipient] charities ... were supporting terrorism." *Id.* at 57. To reach this finding, the district court necessarily ignored or declined to assume the truth of plaintiffs' express allegation that Al Rajhi Bank was "required to determine that the ultimate recipients of these contributions fall within one of the categories prescribed in the Quran for recipients of Zakat." *Id.* At the pleading stage, the court's reasoning is error. *See Iqbal*, 129 S. Ct. at 1950; *Matson*, 631 F.3d at 72.

***114** The district court also failed to follow the standards that govern review of a motion to dismiss when it rejected "as having no evidentiary value" the plaintiffs' allegations that Saleh Abdullah Kamel and Al Rajhi Bank's chairman and managing director, Suleiman Abdel Aziz al Rajhi, were listed on the Golden Chain. SPA247 (*Terrorist Attacks V*); *accord* SPA110 (*DMI-Kamel*); SPA42 (*Terrorist Attacks I*).

This finding is not only an impermissible rejection of plaintiffs' allegations concerning the Golden Chain, but also is inconsistent with the findings of other courts and the Executive branch. For example, the Golden Chain -- along with other documents discovered in the same raid -- was relied upon by the Government in an Evidentiary Proffer of al-Qaeda sponsor, Enaam Arnaout, and also referenced and used as a resource in Arnaout's sentencing hearing. *See supra* pp. 54-55 nn.85-86. It was cited in the **9/11** Commission's Final Report in July 2004, *see supra* pp. 25-26 & n.8, and the CRS has cited it in numerous reports, *see supra* p. 56. The **9/11** Commission Monograph on Terrorism Financing cites to "a group of wealthy donors from the Persian Gulf region known as the "Golden Chain," which provided support to ... Usama Bin Ladin." *See supra* p. 55 & n.87. The **9/11** Monograph continues:

> ***115** The material seized [in Bosnia] included many documents never before seen by U.S. officials, such as the actual minutes of al Qaeda meetings, the al Qaeda oath, al Qaeda organizational charges, and the "Golden Chain" list of wealthy donors to the Afghan mujahideen ....

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See supra p. 56 n.89. The Golden Chain has also been used by the U.S. Treasury Department in designating persons as Specially Designated Global Terrorists. *See supra* p. 55 n.86.

The district court committed further error by failing to credit plaintiffs' allegations that DMI Trust, Dallah al Baraka, and Saleh Abdullah Kamel controlled their subsidiaries that provided material support to al-Qaeda. *See* SPA245, 247 (*Terrorist Attacks V*); SPA109 (*DMI-Kamel*); SPA60 (*Terrorist Attacks I*). A plaintiff sufficiently pleads an ATA claim by alleging that the defendant provided material support to terrorists through an entity that the defendant controlled. *See Wyatt*, 785 F. Supp. 2d at 648 (finding that plaintiffs stated an ATA claim where they alleged that company controlled intermediary through which it provided material support). As the D.C. Circuit explained, "[w]hen one entity so dominates and controls another that they must be considered principal and agent, it is appropriate, under [the ATA], to look past their separate juridical identities ***116** and to treat them as aliases." *Nat'l Council of Resistance of Iran v. Dep't of State*, 373 F.3d 152, 157 (D.C. Cir. 2004).

The plaintiffs' allegations met this standard. For example, plaintiffs allege that DMI Trust and DMI S.A. "directly participate in the oversight and management of DMI Trust's subsidiary and associate entities." JA4329. In addition, DMI Administrative Services, S.A. is alleged to be "a wholly owned subsidiary directly controlled by DMI Trust," JA4330, and DMI Trust is alleged to have "direct involvement" over Faisal Islamic Bank, JA4331. Plaintiffs also allege that Kamel "headed" Dallah al Baraka and its wholly-owned subsidiary, ABID Corp., which "exercised control and direction" over numerous subsidiaries. JA1782, 3122, 3832.

C. The District Court Incorrectly Disregarded Extensive Allegations of Support to al-Qaeda by Defendants Dallah al Baraka and Saleh Abdullah Kamel in the Early to Mid 1990s

The district court also found that the plaintiffs had not pled "the requisite causal connection" for their ATA claims against Dallah al Baraka and Saleh Abdullah Kamel because "the alleged provision of material support" to "Osama bin Laden ... during the early 1990s ... is too remote from the **9/11** terrorist attacks ...." SPA247 (*Terrorist Attacks V*). This conclusion resulted from a legal error regarding the applicable pleading ***117** standard and a legal error regarding the inferences that may reasonably be drawn about support for terrorism, especially against the backdrop of Congress' intended scope of the ATA. The court also made a critical factual error that necessitates correction.

First, the district court incorrectly applied a heightened pleading standard regarding this specific issue. To establish causation when an undefined period of time separates the material support alleged from the terrorist attack, the district court required that the plaintiffs plead:

> sufficient factual allegations of a connection between the material support provided and the acts of terrorism that caused plaintiffs' injuries, such that a *reasonable trier of fact* could conclude that it was *more likely than not* that the support provided by the defendant assisted the terrorists in the commission of the terrorist act.

Id. at 239 (emphasis added). The court's "more likely than not" and "reasonable trier of fact" requirements are inconsistent with *Iqbal/ Twombly*, which only require that a plaintiff plead facts that permit "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. The district court's standard therefore imposed a much greater burden on the plaintiffs than is permitted at this stage of the proceeding.

***118** In addition, the inference that support for al-Qaeda in the early and mid 1990s contributed to al-Qaeda's capabilities and terrorist activities only a few years later, in 2001, is entirely reasonable -- indeed, any other conclusion is unreasonable. Plaintiffs' allegation, which must at this stage be taken as true, was that support in the years leading up to the September 11 attacks, including support for al-Qaeda in Sudan, was essential to al-Qaeda's ability to achieve the global scale and capability

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necessary to mount a significant transborder attack. *See* JA3777-78. In particular, plaintiffs alleged that support during that crucial period enabled al-Qaeda to expand its footprint, train terrorists, plot and plan acts of terror, and carry out such acts around the world. JA798-800, 823, 843-44, 3783, 3836, 3871; *cf.* SPA152 (*Terrorist Attacks IV*) (as the district court elsewhere acknowledged, "[s]ince its inception in the late 1980's, al-Qaeda has relied on well-placed financial facilitators and logistical sponsors to raise, manage and distribute money and resources, enabling it to grow rapidly into a formidable international terrorist network").

Imposing ATA liability on defendants who provide this crucial formative support for a terrorist organization is clearly consistent with Congress' intent, *see supra* pp. 66-73, and consistent with the nature of ***119** how terrorist groups grow and become capable of undertaking attacks which, like the September 11 attacks, often take years of planning and development. See, *e.g.*, **9/11** Commission Final Report p. 48. Thus, as the Seventh Circuit has held *en banc*, the ATA is predicated on the assumption that "[t]errorism campaigns often last for many decades .... Seed money for terrorism can sprout acts of violence long after the investment." *Boim III*, 549 F.3d at 700. The court went so far as to conclude that, as a general matter, imposing liability upon "someone who with the requisite state of mind contributed to a terrorist organization in 1995 that killed an American abroad in 2045 ... would not be as outlandish, given the character of terrorism, as one might think." *Id.* at 699-700. Here, of course, a much more direct connection of a few years exists between defendants' acts that supported the development of what became the world's most extensive and capable global terrorist organization and that group's execution of its most sophisticated and deadly operation.

Lastly, the district court found that "[t]he United States had not even been targeted by al Qaeda" when "defendants provided [Osama bin Laden] with funding" while "in Sudan during the early 1990's." SPA247 (*Terrorist Attacks V*). This finding is blatantly incorrect. *See supra* pp. 28- ***120** 29. Osama bin Laden had been openly "singl[ing] out the United States for attack" "since 1992." 9-11 Commission Final Report, at 48. "Plans to attack the United States were developed with unwavering single-mindedness throughout the 1990s." *Id.*

II. The District Court Improperly Dismissed The Alien Tort Statute Claims Because The Statute Encompasses Claims Based On Acts Related To International Terrorism

The district court dismissed the Alien Tort Statute ("ATS") claims against a handful of defendants because it thought plaintiffs were required to, but did not, plead "factual allegations [to] support a reasonable inference that the defendant[s] purposefully aided and abetted, conspired with, or materially supported al Qaeda in the commission of an act of terrorism involving the hijacking of a commercial airplane." SPA233 (*Terrorist Attacks V*). That holding is based on a mistaken assumption that the ATS authorizes, or plaintiffs alleged, only tort claims based on the hijacking of a commercial airplane in violation of international law. Neither the ATS nor plaintiffs' complaints are so limited. Instead, the ATS permits the federal courts to adjudicate a civil action "by an alien for a tort only, committed in violation of the laws of nations or a treaty of the United States." 28 U.S.C. § 1350. As explained below, the "laws of nations" ***121** prohibit acts of international terrorism, including the provision of material support for terrorism, and is not so narrowly focused on hijacking commercial airplanes. *See infra* at Points II.B & C. And, plaintiffs adequately pled facts that readily support a reasonable inference that defendants knowingly and intentionally provided financing and other forms of material support to al-Qaeda to further its international terrorism. *See supra* Points I.B.2 & I.B.3.

The ATS is a jurisdictional statute that Congress enacted as part of the Judiciary Act of 1789 on the "understanding that the common law would provide a cause of action for the modest number of international law violations with a potential for personal liability at that time," namely "violation of safe conducts, infringement of the rights of ambassadors, and piracy." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712, 724 (2004). In *Sosa*, the Supreme Court held that federal courts also may permit aliens to assert tort claims "based on the present-day law of nations" as long as they "rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms." *Id.* at 724-25. In making this determination, courts should consider "the potential implications for the foreign relations of the United ***122** States" and should be "wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." *Id.* at 727.

In cases decided after *Sosa*, this Court has looked to three factors to determine whether a claim adequately alleges a violation of customary international law that is cognizable in a tort action under the ATS. To state an ATS claim, the alleged tort must

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involve a violation of a norm of customary international law that is "(1) universal and obligatory, (2) specific and definable, and (3) of mutual concern [to States.]" *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 177 (2d Cir. 2009), *cert. denied*, 130 S. Ct. 3541 (2010). As the district court recognized, SPA233 (*Terrorist Attacks V*), aircraft hijacking has long been recognized as a violation of international law that meets these criteria and can give rise to tort claims under the ATS. *See, e.g., Kadic v. Karadzic*, 70 R3d 232, 239 (2d Cir. 1996); *cf. United States v. Yunis*, 924 F.2d 1086, 1092 (D.C. Cir. 1991). What the district court failed to recognize, however, is that the broader concept of international terrorism is also a violation of customary international law that is actionable under the ATS, and plaintiffs adequately alleged that defendants engaged in, and aided and abetted, illegal acts of international terrorism.

***123 A. Plaintiffs Alleged That Defendants Violated the ATS By Intentionally Facilitating International Terrorism**

The Burnett plaintiffs allege that "the Defendants, individually, jointly and severally, aided and abetted, sponsored, financed, promoted, fostered, materially supported, or otherwise conspired to proximately cause the death and injury of innocent persons namely the Plaintiffs herein through and by reason of acts of international terrorism -- the heinous attacks of September 11, 2001." JA970. "As a result and proximate cause of the Defendants' sponsorship of terrorism in violation of the law of nations and customary principles of international law, the Plaintiffs suffered injury and damages as set forth herein." JA972. Such allegations state a claim under the ATS because facilitation of international terrorism is a violation of customary international law that is universal, obligatory, specific and of mutual concern to States.

B. Acts of International Terrorism are a Violation of Customary International Law

In considering whether alleged violations of customary international law are universal, obligatory, specific and of mutual concern to States, courts consider whether the conduct is banned by international conventions and treaties ratified by an overwhelming majority of States, ***124** condemned by binding United Nations Security Council resolutions, and repudiated by individual nations. *See, e.g., Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 256-57, 261-62 (2d Cir. 2003); *Filartiga v. Pena-Irala*, 630 F.2d 876, 881-84 (2d Cir. 1980). Because the Constitution specifically gives Congress the power to "define and punish ... Offenses against the Law of Nations," U.S. Const., art. I, § 8, cl. 10, courts should also accord deference to Congress's determination of what conduct constitutes an offense under the law of nations. *See, e.g., Ex parte Quirin*, 317 U.S. 1, 26 (1942).

Plaintiffs have stated valid ATS claims because international conventions, U.N. Security Council resolutions, the domestic laws of many nations, and laws enacted by Congress pursuant to its authority to define and punish offenses against the laws of nations all demonstrate that there is a universal and obligatory norm against the commission of and material support of international terrorism alleged here -- namely, transnational acts intended to cause death or serious bodily injury to civilians for the purpose of intimidating the population or compelling a government to do some act or refrain from acting.

125 *1. United Nations Security Council resolutions

The U.N. Security Council has adopted numerous resolutions condemning international terrorism and support for international terrorism. In 1998, for example, the Security Counsel adopted a resolution "[s]trongly condemn[ing] the terrorist bomb attacks" on the U.S. Embassies in Kenya and Tanzania on August 7, 1998 "which claimed hundreds of innocent lives, injured thousands of people, and caused massive destruction to property." S.C. Res. 1189, U.N. Doc. S/RES/1189 (Aug. 13, 1998) at ¶ 1. Later in 1998, the Security Council issued a resolution expressing concern about the "continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and the planning of terrorist acts, and *reiterating* that the suppression of international terrorism is essential for the maintenance of international peace and security." S.C. Res. 1214, U.N. Doc. S/RES/1214 (Dec. 8, 1998) at preamble and ¶ 13 (emphasis in original). In addition to the Security Council, the U.N. General Assembly has also adopted resolutions condemning intentional terrorism, including the provision of support to terrorists. *See, e.g.*, G.A. Res. 210, U.N. GAOR, 51st Sess., Annex 1 at 6, U.N. Doc. A/RES/51/210 (1997) (declar[ing] that knowingly ***126** financing, planning and inciting terrorist attacks are ... contrary to the purposes and principles of the United Nations").

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Since the September 11th Attacks, the Security Council has continued to condemn international terrorism and the provision of material support for terrorism and to assert that it poses a serious threat to peace and security. *See, e.g.*, S.C. Res. 1373 (Sept. 28, 2001) (deciding that States shall "[p]revent and suppress the financing of terrorist acts," and "[c]riminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts"); S.C. Res. 1377 (Nov. 12, 2001) (declaring "that acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century, ... that acts of international terrorism constitute a challenge to all States and to all humanity").

2. International conventions

The Security Council has defined international terrorism in accordance with the definition used in international treaties to combat international terrorism. *See, e.g.*, S/RES 156 (Oct. 8, 2004) (recalling that ***127** acts "which constitute offenses within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable ... and calls upon all States to ... ensure that such acts are punished"). One of the principal treaties to combat international terrorism is the 1999 Financing Terrorism Convention. Article 2.1 of that Convention states:

> Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;[115] or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

International Convention for the Suppression of the Financing of Terrorism (Dec. 9, 1999) (1999 Financing Terrorism Convention), 2178 U.N.T.S. 197. The 1999 Financing Terrorism Convention was signed by at least 39 nations ***128** before September 11, 2011, entered into force on April 10, 2002, and now has 132 signatories and 174 parties. *See United States v. Bahlul*, No. 09-001, 2011 U.S. CMCR LEXIS 3, at *126-27 (CMCR Sept. 9, 2011).

Most of the regional and multilateral conventions regarding terrorism employ a similar definition. *See* Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charges (Applicable Law for Special Tribunal for Lebanon), 50 I.L.M. 513, 536 (Spec. Trib. For Leb. July 2011) (discussing conventions). In addition, "all of these conventions require--through the definition of the actus reus (the material element of a crime) or by additional provisions--a transnational element to the crime." Id. These international treaties and conventions support the conclusion that "conduct in support of terrorism [is] internationally condemned and criminal." *United States v. Hamdan*, 801 F. Supp. 2d 1247, 1284 (CMCR 2011).

3. Domestic laws of nations

Countries throughout the world have adopted a similar definition of terrorism in their domestic law (although in some cases the domestic definition is broader than the definition in the international conventions because it does not include the transnational element). *See, e.g., Applicable* ***129** *Law for Special Tribunal for Lebanon*, 50 I.L.M. at *537-39; *Bahlul*, 2011 U.S. CMCR Lexis 3, at *138-148. For these reasons, at least one international court has found that there is a general opinion and practice such that international terrorism is a violation of customary international law. *See Applicable Law for Special Tribunal for Lebanon*, 50 I.L.M. at *535; *Hamdan*, 801 F. Supp. 2d at 1288-92.

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4. Congress and federal courts

United States courts have also found that there is a customary international law norm against international terrorism and the provision of material support for international terrorism. *See Almog*, 471 F. Supp. 2d at 284-85, 291-294 (finding plaintiffs stated ATS claims based on allegations that defendants committed acts of international terrorism that "essentially track the conduct specifically condemned in the Financing and Bombing Conventions, as well as in the ATA sections which implement those Conventions"); *Bahlul*, 2011 U.S. CMCR LEXIS 3, at *134-35 (rejecting argument that crime of providing material support for terrorism is a "novel domestic crime" that was not recognized or charged as a war crime before passage of the Military Commissions Act of 2006, because there is " 'ample evidence' that an 'intent' or 'manner calculated to influence or affect the ***130** conduct of the government ... by intimidation or coercion,' ... now constitutes 'international custom' "); *Hamdan*, 801 F. Supp.2d at 1312 ("offense of providing material support to terrorism" is a violation of the law of war).

This conclusion is reinforced and "informed by the legislative guidance provided by Congress." *Almog*, 471 F. Supp. 2d at 285. Congress, acting pursuant to its Constitutional authority to define and punish violations of the law of nations, has enacted the ATA provisions creating a civil cause of action for U.S. nationals injured by acts of international terrorism. *See id.* at 294; *see also supra* at pp. 66-72. Congress also enacted a provision of the Military Commissions Act of 2006 making it an offense to provide material support for terrorism, which is defined to include "provid[ing] material support ... for, or in carrying out an act of terrorism" and "intentionally provid[ing] material support or resources to an international organization engaged in hostilities against the United States." 10 U.S.C. § 950v(b)(25)(A). Terrorism, in turn, is defined as the intentional killing or infliction of "great bodily harm" on protected civilians "in a manner calculated to influence or affect the conduct of the government or civilian population by intimidation or coercion, or to ***131** retaliate against government conduct ...." *Id.* § 950v(b)(24). After an exhaustive review of the international treaties, Security Council Resolutions, and domestic laws of many nations, the U.S. Court of Military Commission Review recently held that these prohibitions on terrorism are "consistent with international norms applicable at the time" of the September 11th Attacks and "consistent with the general principles of law recognized by civilized nations." *Bahlul*, 2011 U.S. CMCR LEXIS 3, at *149.

Recognizing international terrorism also fully accords with *Sosa's* direction to consider "the potential implications for the foreign relations of the United States" and to be "wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." *Sosa*, 542 U.S. at 727. Like pirates, international terrorists such as al-Qaeda are widely reviled and prosecuted by all States. Indeed, many of the most effective counter-terrorism efforts directed against organizations such as al-Qaeda, in the fields of cross-border finance and otherwise, arise through the coordinated actions of many different types of States. This unanimity of action ensures that permitting ATS claims for international terrorism reflected in the September 11th Attacks has no potentially negative implications for the foreign relations of the United States, which of course ***132** has focused its own foreign affairs over the past decade on eradicating and securing international support to eradicate just this type of international terrorism. Similarly, there is no risk of impinging on the coordinate Branches. Congress has through legislation opened the doors to civil claims and to criminal prosecutions for actions that facilitate international terrorism. *See* 18 U.S.C. §§ 2333, 2339A-2339C; *see supra* at pp. 99-100 (military prosecutions); Companion Brief, at Point I.A.3. And, the Executive Branch has vigorously implemented those statutes and pursued a range of enforcement actions against the financiers, supporters, and other agents of international terrorism in a manner entirely consistent with recognition of an ATS claim for international terrorism in this context. *See* Companion Brief at Point I.A.3.

C. International Terrorism Is Sufficiently Definite and of Mutual Concern to States

As the materials set out above indicate, transborder terrorism attacks undertaken by organizations such as al-Qaeda and its associates are just the sort of definite acts of mutual concern to States that the ATS is designed to enable. Whatever the definitional difficulties at the margins, concerning fighters in internal disturbances or civil wars or political parties with fringe militarist arms, those concerns do not apply to the September 11th Attacks. ***133** Nothing in this Court's decision in *United States v. Yousef*, 327 F.3d 56 (2d Cir. 2003) (per curiam), requires a different result. To be sure, the court in *Yousef* stated that "customary international law currently does not provide for the prosecution of 'terrorist' acts under the universality principle,

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in part due to the failure of States to achieve anything like consensus on the definition of terrorism." *Id.* at 97. But it did so largely because there has been some disagreement among States on how to distinguish "terrorists" from "freedom fighters," and because the district court had rested its holding on the Restatement (Third) of the Foreign Relations Law of the United States instead of primary sources of international law. *Id.* at 98-103, 107-08. Those concerns are not present here.

Any disagreement about how to characterize attacks by domestic attacks within a country by national liberation movements is inapplicable to al-Qaeda's international terrorist attacks on innocent civilians in the United States. *See Almog*, 471 F. Supp. 2d at 281; *Bahlul*, 2011 U.S. CMCR LEXIS 3 at *128. And the primary sources of international law discussed above reveal a customary norm of international law that directly covers the acts of international terrorism alleged in these cases -- transnational attacks, ***134** and the provision of material support for such attacks, on innocent civilians intended to influence the conduct of a government or population by intimidation or coercion. That norm is no "less definite [in] content ... than the historical paradigms familiar when [the ATS] was enacted." *Sosa*, 532 U.S. at 732; *cf. Abdullahi*, 562 F.3d at 184 (although there are varying definitions of piracy, it is actionable under the ATS because " 'whatever may be the diversity by definitions,' " there was a consensus " 'that robbery or forcible depredations upon the sea ... is piracy' ") (quoting *United States v. Smith*, 18 U.S. (5 Wheat) 153, 159-61 (1820)).

Finally, international terrorism is clearly "capable of impairing international peace and security," *Mores*, 414 F.3d at 249, a factor this court has found to be "important" in demonstrating that the international law norm is of " 'mutual' concern to States," and thus actionable under the ATS, *Abdullahi*, 562 F.3d at 185. The U.N. Security Council Resolutions specifically state as much, *see supra* at Point n.b.2, and the United States invaded Afghanistan because the Taliban regime had supported al-Qaeda prior to the September 11th Attacks. *See Hamdan v. Rumsfeld*, 548 U.S. 557 567-68 (2006) (discussing Authorization for Use of Military Force, 115 Stat. 224 (2001)).

***135** For these reasons, there is a customary international norm against the commission of and provision of material support for acts of international terrorism that is sufficiently universal, obligatory, definite, and of mutual concern to States to give rise to a claim under the ATS. Thus, plaintiffs' allegations that defendants purposefully provided financing and other forms of material support to al-Qaeda to further its terrorist mission to attack the United States and its nationals state a claim under the ATS, without regard to whether they also state a claim for aiding and abetting the September 11th Attacks. The district court therefore erred as a matter of law in dismissing the ATS claims on the ground that they failed to allege that defendants "purposefully aided and abetted, conspired with, or materially supported al Qaida in the commission of an act of terrorism *involving the hijacking of a commercial airplane*." SPA233 (*Terrorist Attacks V*) (emphasis added).

III. The District Court Improperly Dismissed the Torture Victim Protection Act Claims

Plaintiffs also brought claims under the Torture Victim Protection Act ("TVPA"), which provides a cause of action for victims of torture or extrajudicial killings perpetrated by "individual[s]" acting "under actual or apparent authority, or color of law, of any foreign nation." 28 U.S.C. § 1350 ***136** note. The district court dismissed plaintiffs' TVPA claims against defendants Al Rajhi Bank, Saudi American Bank, and National Commercial Bank on the ground that corporate entities are not "individuals" who may be sued under the TVPA. SPA52 (*Terrorist Attacks I*) (citing *Arndt v. UBS AG*, 342 F. Supp. 2d 132, 141 (E.D.N.Y. 2004)). This conclusion is incorrect, and the issue is likely soon to be definitively resolved by the U.S. Supreme Court, which is considering a pending case presenting this issue.

As an initial matter, this Court has already indicated that an organizational defendant can be sued under the TVPA in *Khulumani v. Barclay Nat'l Bank. Ltd.*, 504 F.3d 254 (2d Cir. 2007). In *Khulumani*, the plaintiffs asserted aiding and abetting claims under the TVPA against a bank for its participation in the torture and extrajudicial killings committed by the South African apartheid regime. *Id.* at 259. This Court dismissed the TVPA claims on the ground that the plaintiffs failed to allege that the bank had acted under color of law, but it did not question whether the bank was a proper defendant under the TVPA in the first place. *Id.* at 260. Based on *Khulumani*, the district court later held that a "corporation or other entity may ... be subject to liability under the TVPA for aiding and ***137** abetting" a principal violator. SPA210 (*Terrorist Attacks IV*); *accord* SPA234 (*Terrorist Attacks V*).

More importantly, the Supreme Court recently granted certiorari in *Mohamad v. Rajoub*, 132 S. Ct. 454 (2011), which will resolve a circuit split over whether the TVPA permits actions against non-natural persons. *Compare Sinaltrainal v.*

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Coca-Cola Co., 578 F.3d 1252, 1258 n.5 (11th Cir. 2009) (allowing TVPA action against corporate defendant), *and Khulumani*, 504 F.3d at 260, *with Mohamad v. Rajoub*, 634 F.3d 604, 607-08 (D.C. Cir. 2011) (holding that TVPA liability does not extend to non-natural persons), *and Aziz v. Alcolac, Inc.*, 658 F.3d 388, 392 (4th Cir. 2011) (same), *and Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1126-27 (9th Cir. 2010) (same). In the interest of judicial economy, plaintiffs respectfully request that this Court defer deciding their appeal of the dismissal of their TVPA claims until the Supreme Court has decided *Mohamad* and the Court can obtain the benefit thereafter of the parties' views of the implications of that decision for this case.

Alternatively, should *Mohamad* not result in an opinion or if this Court is inclined to reach a decision on the TVPA claims independently of *Mohamad*, it should vacate the district court's dismissals. The TVPA ***138** creates an action in tort and, therefore, should be interpreted in light of the well-established common law (and international law) presumption that organizations are liable in tort for the acts of their agents. *See Balt. & Potomac R.R. v. Fifth Baptist Church*, 108 U.S. 317, 330 (1883); Br. for Petitioners at 12-17, *Mohamad v. Palestinian Authority*, No. 11-88 (Sup. Ct. Dec. 14, 2011) ("*Mohamad* Br."). Moreover, the TVPA's use of the term "individual" comports with this presumption because this term has often been construed as synonymous with the term "person," which has a broad legal meaning that includes organizational entities, such as corporations. *See, e.g., Clinton v. City of New York*, 524 U.S. 417, 428 & n.13 (1998); *Mohamad* Br. at 19-20 (citing cases from federals courts of appeals); *see also id.* at 17-18 (noting that dictionary definitions of the word "individual" often include non-natural entities).

Furthermore, such a broad interpretation is consistent with the structure of the TVPA, which incorporates agency principles by imposing liability on individuals who "subject[]" a victim to torture or extrajudicial killing. *Id.* at 25-26. This construction also is consistent with the fact that organizational liability exists under other federal statutes that provide civil remedies to victims of torture and extrajudicial killing. *See, e.g.*, ***139** *Brentwood Acad. v. Term. Secondary Sch. Athletic Ass'n*, 531 U.S. 288 (2001) (permitting a section 1983 suit against an association); *Ungar v. Palestine Liberation Org.*, 402 F.3d 274, 276 (1st Cir. 2005) (affirming ATA judgment against terrorist organizations); *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 72 (D.D.C. 2010) (finding terrorist organization liable under 28 U.S.C. § 1605A(c)); *see also Mohamad Br.* at 30-34. Finally, the legislative history of the TVPA reveals that Congress's use of the term "individual" in the TVPA was only to "make crystal clear that foreign states or their entities cannot be sued ...." S. Rep. No. 102-249, at 6 (1991), and that Congress repeatedly assumed that organizations would be proper defendants in TVPA lawsuits. *Mohamad* Br. at 43-49. For these and other reasons elaborated in the briefs before the Supreme Court in *Mohamad*, Congress clearly intended the TVPA to provide a remedy against a broader set of defendants that includes entities other than natural persons.

IV. The District Court Improperly Dismissed the Negligence And Intentional Tort Claims

Plaintiffs pleaded a number of state law tort claims against defendants subject to this appeal, including negligence, negligent infliction of emotional distress ("NIED"), intentional infliction of emotional distress ("LIED"), assault and battery, trespass, and recovery under New York's ***140** wrongful death and survival statutes. The district court wrongly dismissed claims against defendants under each of these theories of tort liability.

A. The District Court Wrongly Dismissed the Negligence Claims

The district court dismissed plaintiffs' claims for negligence and NIED based on its conclusion that the plaintiffs failed to "allege or identify a duty owed to Plaintiffs" by the defendants. SPA55 (*Terrorist Attacks I*); *cf.* SPA232 n.6 (*Terrorist Attacks V*); SPA88 (*Terrorist Attacks II*). The court was simply wrong about this: plaintiffs expressly alleged a duty owed and violated by the defendants. *See* R.3916 ("By virtue of their participation in the conspiracy to commit acts of international terrorism against the United States, its nationals and allies, including the September 11th Attack, *the defendants negligently, intentionally, recklessly, willfully and wantonly breached duties of care owed to plaintiffs* and the employees of plaintiffs' insureds.") (emphasis added).

Because the district court overlooked the plain language of the pleadings, it did not conduct an analysis of whether defendants did, in fact, owe plaintiffs a duty of care. Had it done so, it would have found the duty to be manifest. In New

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York, courts determine the "threshold question" of whether a duty of care exists "by balancing factors, including [1] the ***141** reasonable expectations of parties and society generally, [2] the proliferation of claims, [3] the likelihood of unlimited or insurer-like liability, [4] disproportionate risk and reparation allocation, and [5] public policies affecting the expansion or limitation of new channels of liability." *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232 (2001), opinion after certified question answered, 264 F.3d 21 (2d Cir. 2001) (internal quotation marks and citation omitted). A defendant may have a duty of care with respect to a third-party's actions "where there is a relationship either between defendant and a third-person tortfeasor that encompasses defendant's actual control of the third person's actions, or between defendant and plaintiff that requires defendant to protect plaintiff from the conduct of others." *Id.* at 233. For example, New York recognizes the doctrine of negligent entrustment, whereby

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

Restatement (Second) of Torts (1965), § 390. *See Splawnik v. DiCaprio*, 540 N.Y.S.2d 615, 616-17 (N.Y. App. Div. 1989) (citing the negligent ***142** entrustment doctrine and holding defendant liable for leaving gun with suicide victim because "the supplier owes a duty to foreseeable parties to withhold the chattel from the entrustee").

Here, where defendants are alleged to have known -- or at least been on notice of facts supporting a conclusion regarding -- the terrorist nature of the al-Qaeda network they supported, the factors weigh overwhelmingly in support of a duty of care. As the Seventh Circuit has concluded, lending material support to a terrorist organization, even *without* knowledge of its activities, satisfies the elements of negligence. *Boim III*, 549 F.3d at 693. *A fortiori*, providing support while *knowing* the character of the terrorist organization is like giving "a gun you know is loaded to a child .... [D]oing so is reckless and if the child shoots someone" the defendant "will be liable to the victim" even under the higher standard for recklessness. *Id.*

Analogously, in *Sickles v. Montgomery Ward & Co.*, a department store was held liable for negligence when an employee sold an air rifle to a father, knowing that it was intended as a gift to his son, and the son later shot the eye of another child. 167 N.Y.S.2d 977 (N.Y. Sup. Ct. 1957). The court found that the store clerk "should have known" it to be irresponsible ***143** to sell the rifle, not only because of the "known propensities of young children in whose possession firearms are placed," but also because the sale "was specifically proscribed by the Penal Law" and violated the "legislative policy of the State." *Id.* at 979. Nor did the fact that the defendant sold the rifle to the father, rather than the boy directly, changes the analysis. *Id.* ("The naked legality of the sale to the parent, also *in pari delicto*, does not operate to relieve the defendant from liability.") (emphasis added).

Here, plaintiffs allege that defendants gave material support to persons and organizations they had every reason to suspect were terrorists, and did so either directly or through front institutions -- in clear violation of the United States' policies against such actions. *See* Companion Brief at Point LA. The "reasonable expectations of parties and society generally" and "public policies affecting the expansion" of liability therefore weigh heavily in favor of recognizing a duty of care. *Hamilton*, 96 N.Y.2d at 232. Moreover, recognizing a duty would not give rise to a "likelihood of unlimited or insurer-like liability" or a "proliferation of claims" because the class of potential claimants is restricted to those injured by terrorist attacks and "does not extend beyond that limited class of plaintiffs to members of ***144** the community at large." *Id.* at 232-33. Finally, imposing a duty of care on those who provide material support to terrorists makes sense as a matter of "risk and reparation allocation," *id.* at 232, because "[d]amages are a less effective remedy against terrorists and their organizations than against their financial angels." *Boim III*, 549 F.3d at 690.

As for plaintiffs' NIED claims, the district court itself recognized that under New York law, NIED may be established under the "bystander theory," whereby a defendant is negligent for conduct that is "a substantial factor in bringing about injuries to the plaintiff in consequence of shock or fright resulting from his or her contemporaneous observation of serious physical injury or death inflicted by the defendant's conduct on a member of the plaintiff's immediate family in his or her presence." *Bovsun v. Sanperi*, 61 N.Y.2d 219, 223-24 (1984); *see* SPA54 (*Terrorist Attacks I*). A plaintiff need not have been physically

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present at the time of death or injury to recover under NIED. *Bovsun*, 61 N.Y.2d at 233. Here, plaintiffs -- many of them the surviving family members of **9/11** victims -- allege that the defendants' knowing material support of al-Qaeda was instrumental in allowing the organization to develop and perpetrate the **9/11** attacks, *e.g.*, JA3779-80, and fit easily under the bystander theory.

***145** Given the express allegation of a duty of care in plaintiffs' pleadings, the clear existence of defendants' duty under traditional tort principles, and the deferential standard afforded to the complaint at the motion to dismiss stage, *Matson*, 631 F.3d at 72, the Court should vacate the dismissal of plaintiffs' negligence and NIED claims.

B. The District Court Wrongly Dismissed the Intentional Tort Claims

The district court dismissed plaintiffs' intentional tort claims for assault, battery, and IIED for a number of equally misguided reasons.

1. Plaintiffs' Claims Are Not Time-Barred.

The court first held that all of the *Federal Ins.* plaintiffs' claims are barred because they were filed outside of New York's one-year limitations period that applies to these intentional torts. SPA232 n.6 (*Terrorist Attacks V*); SPA210 (*Terrorist Attacks IV*); SPA101-02 (*DMI-Kamel*); SPA87-88 (*Terrorist Attacks II*); SPA53 (*Terrorist Attacks I*) (citing *Holmes v. Lorch*, 329 F. Supp. 2d 516, 523 (S.D.N.Y. 2004)); N.Y. C.P.L.R. 215(3) (McKinney 2002)).

The court failed to recognize, however, that certain of the *Federal* plaintiffs' claims arise from injuries suffered in Pennsylvania and Virginia. Applying New York choice-of-law principles, the district court should have ***146** found the Virginia and Pennsylvania-based claims timely under those States' two-year statutes of limitations. *Fin. One Pub. Co. v. Lehman Bros. Special Fin., Inc.*, 414 F.3d 325, 331 (2d Cir. 2005) (where "jurisdiction is grounded in diversity, we apply the forum state's choice-of-law rules"); *Neumeier v. Kuehner*, 286 N.E.2d 454, 457-58 (N.Y. 1972) (where the plaintiff and defendant are domiciled in different states, New York courts generally apply the law of the state where the injury occurred.); Va. Code § 8.01-243(A) (two-year default statute of limitations for personal injury claims); *Luddeke v. Amana Refrigeration, Inc.*, 387 S.E.2d 502, 504 (Va. 1990) (under Virginia law, both intentional infliction of emotional distress and assault and battery claims are subject to a two-year statute of limitations.); 42 Pa. Consol. Stat. §§ 5524(1) (two-year statute of limitations for assault and battery actions) & 5524(7) (two-year default statute of limitations for personal injury actions); *Bougher v. Univ. of Pittsburgh*, 882 F.2d 74 (3d Cir. 1989) (applying two year statute of limitations to a claim for intentional infliction of emotional distress); SPA53-54 (*Terrorist Attacks I*) (recognizing that the *Federal* plaintiffs filed their complaint less than two years after the **9/11** attacks).

***147** For those claims that are subject to New York's statute of limitations, the district court should have applied equitable tolling principles. All of plaintiffs' claims arise from the defendants' participation in the conspiracy to conduct terrorist attacks against the United States, which was designed to hide the identity of the participants from disclosure to the outside world. As a result, the statute of limitations was tolled until the plaintiffs reasonably should have become aware of the defendants' involvement in the conspiracy, itself a question of fact to be determined through discovery. *Yeadon v. New York Transit Auth.*, 719 F. Supp. 204, 209 (S.D.N.Y. 1989) (If "a defendant has concealed facts that are critical to a cause of action, then the statute of limitations is tolled until plaintiff discovers or with reasonable diligence should have discovered his claim"); *In re Issuer Plaintiff Initial Pub. Offering Antitrust Litig.*, 00 CIV 7804 (LMM), 2004 WL 487222, at *5 (S.D.N.Y. Mar. 12, 2004). Given the clandestine nature of the conspiracy in which the defendants participated, equitable principles require that the statute of limitations be tolled. *See Johnson v. Nyack Hosp.*, 86 F.3d 8, 12 (2d Cir. 1996) (holding that "[e]quitable tolling allows courts to extend the statute of limitations beyond the time of expiration as necessary to avoid inequitable circumstances").

148** ***1. Plaintiffs Pleaded That Defendants Materially Supported al-Qaeda.

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The district court also dismissed many other *non-Federal* plaintiffs' intentional tort claims for assault and battery, trespass, and wrongful death and survival on the ground that plaintiffs failed to allege that the defendants had "supported, aided and abetted, or conspired with the September 11 terrorists" in a manner that warranted liability. SPA101-02 (*SAMBA I*); SPA87-88 (*Terrorist Attacks II*); SPA53-54 (*Terrorist Attacks I*). The court dismissed corresponding wrongful death and survival claims, as well as the *Federal Ins.* plaintiffs' trespass claims, on the same grounds. SPA231-32, 252-53 & n.12 (*Terrorist Attacks V*); SPA101-02 (*SAMBA I*); SPA88, 98 (*Terrorist Attacks II*); SPA53-54, 61-62 (*Terrorist Attacks I*).

As the court recognized, however, because the ATA incorporates state tort law causes of action, liability under the plaintiffs' intentional tort claims, wrongful death and survival claims, and trespass claims is necessarily coextensive with liability under the ATA. SPA88 (*Terrorist Attacks II*) ("If Plaintiffs state a claim for relief under the ATA, they will have also stated a claim for wrongful death and survival, the *Federal* Plaintiffs will have stated a claim for trespass, and the *Aston* and *Burnett* Plaintiffs will have stated claims for intentional infliction of emotional ***149** distress."). Because the complaints state claims under the ATA for knowingly providing material support to al-Qaeda, *see supra* Point LA & LB, the district court's dismissal of plaintiffs' intentional tort claims -- like its dismissal of the ATA claims -- should be vacated.

2. Defendants Who Supported al-Qaeda Through Its Network Are Liable.

Finally, in its most recent opinion, the district court held that the intentional tort claims against some defendants (precisely which ones, the court does not say) fail because plaintiffs "broaden the scope of liability to include those who allegedly aided, abetted, conspired and/or provided material support to other terrorist organizations that were affiliated with al Qaeda." SPA231-32 (*Terrorist Attacks V*). The court appears to have concluded that because plaintiffs alleged that some defendants supported front charities and institutions in the larger al-Qaeda network that funnel money to the organization, rather than, say, wrote a check directly payable to "al Qaeda," plaintiffs therefore have not alleged that defendants supported al-Qaeda at all.

To the extent that this is what the court meant, then Judge Daniels -- who took over the MDL litigation after Judge Casey passed away -- advances a line of reasoning never endorsed by his predecessor. Indeed, ***150** this line of reasoning would be contrary to the court's own prior statements of law, if not its applications thereof. *Cf.* SPA24 (*Terrorist Attacks I*) ("The Court is not ruling as a matter of law that a defendant cannot be liable for contributions to organizations that are not themselves designated terrorists. But [the defendant must have] kn[own] the receiving organization to be a solicitor, collector, supporter, front or launderer for such an entity.").

More problematic than inconsistency, however, is the fact that the court's rationale is incorrect. Support for a terrorist organization can be just as intentional if provided directly to the organization as if provided through an intermediary or agent certain to pass the funds to the terrorists. For this reason, courts have repeatedly recognized that material supporters of terrorism may be found liable "even where support wasn't provided directly" to the attackers, but rather through "support to an alias or agent." *Goldberg*, 660 F. Supp. 2d at 432; *cf. Nat'l Council of Resistance of Iran*, 373 F.3d at 157-58 ("Just as it is silly to suppose" that State Department designations of terrorist organizations did not survive organizational name changes, "so too it is implausible to think that Congress" did not "authorize the Secretary to prevent" terrorist organizations "from marshaling all the same support via juridically separate agents subject to its ***151** control."). And, such a rule would have provide a ready path for terrorist organizations to shield their financiers from liability -- simply by placing having the financier contribute to a cooperative intermediary. *See* Companion Brief at Point I.A.3 (describing implications of excluding from liability indirectly provided support for terrorism); *see Boim III*, 549 F.3d at 690-91 (shielding a financier from liability would exclude from the operation of the law precisely those parties most likely be deterred by the prospect of liability).

Plaintiffs have consistently alleged in their pleadings that al-Qaeda operates through an integrated network of institutions and individuals. *E.g.*, R.3779-80. The district court, for its part, cited no authority in support of its "al Qaeda-only" principle, which departs from both precedent and common sense. The dismissals of plaintiffs' tort claims predicated upon it should be vacated.

V. The Court Should Reverse The Dismissals Of NCB and the Sovereign Defendants Based Upon *Doe v. Bin Laden*

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The Court should reverse the dismissals of three defendants -- the Saudi Joint Relief Committee and Saudi Red Crescent Society (collectively, "Sovereign Defendants") and National Commercial Bank ("NCB") -- and remand for jurisdictional discovery on the basis of this Court's recent ***152** holding in *Doe v. Bin Laden*, which abrogated the basis upon which the district court dismissed the Sovereign Defendants and NCB. Plaintiffs previously raised this argument in their separate Motion to Summarily Vacate and Remand these three defendants. *See* Dkt. 243. In addition to the following, plaintiffs hereby incorporate by reference the arguments in their pending Motion.

A. *The Sovereign Defendants And NCB Were Dismissed Under Terrorist Attacks III.*

In *Terrorist Attacks III*, this Court held that the Foreign Sovereign Immunities Act's ("FSIA") torts exception, 28 U.S.C. § 1605(a)(5), did not provide subject-matter jurisdiction over sovereign entities engaging in terrorism, as defined under the FSIA's terrorism exception, 28 U.S.C. § 1605A, but who nevertheless could not be sued under the terrorism exception because they were not designated as state sponsors of terrorism. *See* 538 F.3d 71, 75. In such cases, where the terrorism exception to sovereign immunity was unavailable, the Court reasoned, the FSIA's torts exception could not provide an independent basis of jurisdiction because claims within the scope of the terrorism exception could not be "shoehorn[ed]" into the torts exception. *Id.* at 89.

***153** Following *Terrorist Attacks III*, plaintiffs conceded before the district court that, to the extent that *Terrorist Attacks III* were applied, the decision supported dismissal of the Sovereign Defendants because they were also sovereign entities and plaintiffs had predicated subject matter jurisdiction upon the FSIA torts exception. *See* R.2148-2, at 23-24; SPA159-60 & n.4. However, plaintiffs expressly reserved the right to argue on appeal that the Second Circuit panel had misstated governing legal standards and that dismissals predicated upon *Terrorist Attacks III* should be reversed. R.2148-2, at 23-24.

NCB also was dismissed under *Terrorist Attacks III*'s holding on the scope of the FSIA torts exception in § 1605(a)(5). SPA197-98 & n.12. The district court rejected plaintiffs' argument that a lack of personal jurisdiction could not be the basis of dismissal because NCB was a sovereign. *Id.* at n.12; *see Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Rep.*, 582 F.3d 393, 398-401 (2d Cir. 2009) (foreign states and their agents are not "persons" under the Due Process Clause, and thus not entitled to due process safeguards such as minimum-contacts personal jurisdictional analysis). Following *Terrorist Attacks III*, the court reasoned that "a potential finding as to NCB's sovereign status would simply result ***154** in NCB being immune from suit by virtue of the FSIA," because the neither the torts exception (because the conduct alleged was terrorism) nor the terrorism exception (because NCB was not a designated sponsor of terrorism) would provide subject matter jurisdiction. SPA198 n.12.

B. *Doe* Overruled *Terrorist Attacks III*

While the appeals against the Sovereign Defendants and NCB have been pending, this Court has overruled *Terrorist Attacks III's* holding on the scope of the FSIA torts exception, *i.e.*, the basis for the dismissals of the Sovereign Defendants and NCB. *Doe*, 663 F.3d at 70-71. In *Doe*, this Court recognized that the "terrorism exception, rather than limiting the jurisdiction conferred by the noncommercial tort exception, provides an *additional* basis for jurisdiction." *Id.* at 70. Therefore, the Court concluded, "the noncommercial tort exception can be a basis for a suit arising from the terrorist acts of September 11, 2001." *Id.* at 66. The Court announced that *Terrorist Attacks III* had been overruled in this respect pursuant to this Circuit's mini-en *banc* procedure. *Id.* at 70 n.10. *Doe*, therefore, is now the law of this Circuit.

*155 C. The Court Should Reverse the Dismissals of the Sovereign Defendants and NCB and Remand For Jurisdictional Discovery

Because this Court has overruled the basis of the dismissals of the Sovereign Defendants and NCB, reversal and remand is appropriate relief. *See id.* at 71; *also see Carter v. Barry*, 468 F.2d 821 (2d Cir. 1972) (per curiam) (granting motion to summarily reverse or give expedited consideration to district court's order of dismissal). As a general rule " 'an appellate court must apply the law in effect at the time it renders its decision.' " *Ahern v. Cnty. of Nassau*, 118 F.3d 118, 121 (2d Cir.

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1997) (quoting *Thorpe v. Housing Auth.*, 393 U.S. 268, 281 (1969)). Here, that law has been established by *Doe*, an intervening decision, and *Doe's* application to the Sovereign Defendants and NCB is straightforward. *Cf. Rivera v. Heyman*, 157 F.3d 101, 102 (2d Cir. 1998) (vacating the district court's dismissal of a claim because of "a change in the law during the pendency of th[e] appeal").

Jurisdictional discovery is necessary for both the Sovereign Defendants and NCB. Plaintiffs have raised allegations against the Sovereign Defendants that are substantively identical to the ones raised in ***156** *Doe*, which the Court found required jurisdictional discovery.[116] *Cf. Doe*, 663 F.3d at 65, 71. Likewise, the district court previously noted the need for further jurisdictional discovery to resolve NCB's status as a sovereign instrumentality in the first instance. *See* SPA12 (*Terrorist Attacks I*) ("NCB submits that it is an instrumentality of the Kingdom of Saudi Arabia"). *Doe* makes plain that the proper course of action in such situations is to reverse and remand for such discovery. *Doe*, 663 F.3d at 65.

Conclusion

For the foregoing reasons and those provided in plaintiffs' brief addressing personal jurisdiction, the Court should reverse the district court's dismissal of certain defendants from these proceedings, reinstate the claims dismissed against them, and remand for further proceedings consistent with those determinations.

Footnotes

1 The court dismissed approximately 20 defendants pursuant to Rule 12(b)(6), only five of which are the subject of this appeal. The district court also granted motions to dismiss under Rule 12(b)(2) filed by approximately 60 defendants, of which 36 are appellees herein, and further granted motions to dismiss under Rule 12(b)(1) with respect to nine defendants who claimed sovereign immunity under the Foreign Sovereign Immunities Act ("FSIA"), three of which are appellees herein. The dismissals under Rule 12(b)(2) are addressed in Appellants' Consolidated Brief with Respect to Personal Jurisdiction ("Companion Brief") filed concurrently with this brief. This brief addresses only the dismissals under Rule 12(b)(6) and Rule 12(b)(1).

2 A previous Rule 54(b) partial final judgment was entered with respect to certain of the defendants dismissed in *Terrorist Attacks I* and *Terrorist Attacks II*. This Court's decision affirming those dismissals is reported at 538 F.3d 71 (2d Cir. 2008) ("*Terrorist Attacks III*").

3 There is no universally accepted way to transliterate Arabic names into English. The spellings used by plaintiffs are derived from common usage in source materials, the press, or government documents. Where quoting from a document, pleading, or decision, plaintiffs have used the spelling in the original.

4 Citations in the form "JA#" are to pages in the Joint Appendix. Citations in the form "SPA#" are to pages in the Special Appendix. Citations in the form "R.#" are to the docket number of documents in the record on appeal. Unless otherwise

5 JA1360-74, 1697-1750, 1918-25, 2119-2208, 2349-65, 2428-2547, 2559-2674, 2715-85, 2812-2954, 3085-3201, 3234-3494, 3965-4645, 4725-5369, 5471-5530, 5955-6103, 6123-6340.

6 The actual withdrawal has not been filed.

7 JA3602-04, 3776-78, 7863-64.

8 Final Report of the National Commission on Terrorist Attacks Upon the United States ("**9/11** Commission Final Report"), available at http:// www.911commission.gov/report/911Report.pdf, p. 55; JA7864; R.1015, Ex. 2 (CIA Fact Sheet, *Usama Bin Laden -- Islamic Extremist Fundraiser*).

9 JA3602-07, 3776, 7864.

10 JA3777, 7864-65, 4186-91; R.1257, Ex. 4, pp. 17-18 (United States Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements, *United States v. Enaam Arnaout*, 02-cr-892, (N.D. Il.) (incorporated by reference into the *Federal* FAC at ¶ 88 [JA3782] (hereinafter referred to as "Arnaout Evidentiary Proffer"); R.963, Ex. 1, pp. 4-5, 7-8, 10-11 (1996 CIA Report); R.209, Exs. 1 and 2 (June 2004 Press Releases issued by the U.S. Department of the Treasury regarding the

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designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation); R.977, Ex. E, p. 4 (August 2002 FBI Report -- Interview with former Al Qaeda member Jamal Al Fadl); R.277, Ex. 6, p. 5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Muwafaq Foundation).

11 JA3777, 4186-91, 7865.

12 JA3777-78, 4186, 7865.

13 **9/11** Commission Final Report, p. 56; JA7865.

14 **9/11** Commission Final Report, p. 59; R.2059 (Order by Judge George B. Daniels holding that "1992 is the year prior to the 1993 attacks against the United States, and the year when it is alleged that Osama bin Laden and other senior al Qaeda leadership issued a formal fatwah, specifically calling for jihad against the United States and other Western allies.").

15 JA3630-31.

16 JA3602-03, 3629-30, 3655-56, 3778-80, 3848-49.

17 JA3778-79.

18 JA3650-52, 3656-66, 3788-98, 3807-09, 3982-86, 4052-54, 4129-30, 4210-14, 4427-30, 4538-41, 7867-71, 7882-94; R.1257, Exs. 3, pp. 15-17 (Second Report of the United Nations Monitoring Group on Al Qaida) and Ex. 4, pp. 28-32 (Arnaout Evidentiary Proffer).

19 JA3673-90, 3693-3707, 3779, 3801-05, 3810, 3818, 3830, 3842, 3982, 4073-74, 4166-68, 4187-89, 4200-01, 4292, 4430, 4451-54, 4478-82, 4535, 4501-04, 4537-38, 6188-96, 7867-71, 7879-94; R.963, Ex. 1, pp. 4-5, 10-11 (1996 CIA Report); R.1257, Ex. 3, pp. 16-17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.209, Ex. 2 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation); R.277, Ex. 6 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Muwafaq Foundation); R.1031, Ex. 8, pp. 14-15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

20 JA3602-3728, 3778-3821.

21 JA3778-3821, 4139-40.

22 JA3646-47, 3656-66, 3693-3707, 3714, 3717-22, 3802, 3812, 3818, 3862-68, 3982-86, 4166-68, 4210-14, 4451-54, 4478-82, 4496-4504, 6175-99, 7867-71, 7882-94; R.1257, Ex. 3, pp. 16-17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.209, Ex. 1 and 2 (June 2004 Press Releases issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation); R.1039, Ex. 4, p. 1 (September 9, 2004 Press Release from the U.S. Department of the Treasury regarding the designations of Soliman Al Buthe and the U.S. branch of Al Haramain Islamic Foundation); R.277, Ex. 6, (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Yassin al Kadi and Muwafaq Foundation).

23 JA3982-86, 4120-4214, 4166-68, 4451-54, 4478-82, 4496-4504, 6175-99.

24 JA3778-3821.

25 JA3983-84, 4211-12.

26 JA3792, 3795-96, 3803-04, 3809.

27 JA4188-89, 4200-01, 4535; R.1257, Ex. 3, p. 17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.1031, Ex. 8, p. 15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

28 JA3790-91, 4130, 6177-79; R.1257, Ex. 4, p. 18 (Arnaout Evidentiary Proffer).

29 JA3810, 4188-89, 4200-01, 6180.

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30 JA3790-91, 4130, 6177-81; R.1257, Ex. 3, p. 17 (Second Report of the United Nations Monitoring Group on Al Qaida); R.977, Ex. H (September 2002 Press Release from the U.S. Department of the Treasury regarding the designation of Wa'el Hamza Jelaidan).

31 JA3791-92; R.277, Ex. 3 (Arnaout Evidentiary Proffer, Exhibit of the U.S. Government -- correspondence on MWL and IIRO letterhead discussing a meeting with Naseef and the agreement to launch attacks from MWL offices).

32 JA3791-92.

33 JA868-69, 2063, 3658-59, 3790-91, 4212, 4130, 6179.

34 JA878, 1842-43, 3705, 5686.

35 JA3790-91, 4212, 4130.

36 JA3791-92; R.277, Ex. 3, p. 3 (Arnaout Evidentiary Proffer, Exhibit of the U.S. Government).

37 JA3795; R.1257, Ex. 3, pp. 16 and 18 (Second Report of the United Nations Monitoring Group on Al Qaida); R.219, Ex. 1, pp. 3-8, 14 (U.S. Government's Response Brief in Support of Decision of the Immigration Judge Denying Respondent Bail, *In the Matter of Mohammad J. A. Khalifa Respondent, In Bond* Proceedings, Case No. A29-457-661 -- stating that Khalifa, a known international terrorist, "has been providing support to terrorist groups which have undertaken bombings of civilian targets in [the Philippines], including theaters, and have kidnapped American citizens.").

38 JA3660-61, 3714-15, 3795, 4052-53, 4538-39; R.963, Ex. 1, p. 8 (1996 CIA Report).

39 R.1762, Ex. 10, pp. 4-5 (Substitution for the Testimony of Khalid Sheikh Mohammed, *U.S. v. Moussaoui*).

40 JA3764, 4539; R.1257, Ex. 3, p. 18 (Second Report of the United Nations Monitoring Group on Al Qaida).

41 JA3794; R.963, Ex. 1, pp. 7-8 (1996 CIA Report).

42 JA1776-77.

43 R.209, Ex. 1, p. 1 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation).

44 JA2442-43; R.209, Ex. 2, p. 3 (June 2004 Press Release issued by the U.S. Department of the Treasury regarding the designations of Aqeel Al Aqeel and Al Haramain Islamic Foundation).

45 R.1039, Ex. 4 (September 9, 2004 Press Release from the U.S. Department of the Treasury regarding the designations of Soliman Al Buthe and the U.S. branch of Al Haramain Islamic Foundation).

46 JA2445-46.

47 R.1038, p. 19.

48 JA3813, 4451, 4502-04, 4478-81, 6189-90, 7867-71; R.277, Ex. 6, pp. 4-5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Yassin al Kadi and Muwafaq Foundation) and Ex. 7 (German Intelligence Report, Investigation of Yassin Qadi and Muwafaq).

49 JA4480-81, 4503, 7869-71; R.277, Exs. 6, p. 5 (November 29, 2001 letter from U.S. Department of the Treasury to Swiss officials regarding Yassin al Kadi and Muwafaq Foundation) and Ex. 7 (German Intelligence Report, Investigation of Yassin Qadi and Muwafaq).

50 JA6189.

51 JA4502, 6189, 7868-70.

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52 JA3818, 4478, 6175; R.1257, Ex. 3, p. 16 (Second Report of the United Nations Monitoring Group on Al Qaida); R.1762, Ex. 5, p. 7 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

53 JA3778-3780, 3782-3783, 3785-3786, 3790-3792, 3794-3795, 3802, 3808-3809, 3810.

54 JA3821-44, 4281-83, 4352-55, 4465-69, 5891-93, 6208-20, 7863-94.

55 JA3882.

56 Testimony of Lee S. Wolosky to the National Commission on Terrorist Attacks Upon the United States, April 1, 2003. *See also* Council on Foreign Relations, *Terrorist Financing*, Maurice R. Greenberg, William F. Wechsler, and Lee S. Wolosky, available at www.cfr.org/content/publications/.../ Terrorist_ Financing_TF.pdf.

57 JA3606-16, 3708-10, 3715-28, 3827-31, 3835-38, 4281-83, 4292, 4329-43, 4352-55, 4465-69, 4478-82, 4496-4504, 5981-93, 6208-20.

58 JA3606-16, 3835-38, 4329-42, 4352-55, 5981-93, 6208-20; R.1015, Exs. 2, pp. 1-2 (CIA Fact Sheet, *Usama Bin Laden -- Islamic Extremist Fundraiser*) and Ex. 3, p. 2 (March 24, 2004 Testimony of Former National Security Advisor Richard A. Clarke before the 9/11 Commission); R. 1257, Ex. 4 (Arnaout Evidentiary Proffer).

59 *United States v. Bin Laden, et al*, 397 F. Supp. 2d 465, 515-516, 518 (S.D.N.Y. 2005).

60 JA3606-16, 3837-38, 4334-35, 4354, 5983-84, 6212-14.

61 JA3835, 4333-54, 5998, 6215-17.

62 JA6209-10, 6237-38.

63 JA3827-31, 3715-22, 4073-74, 4281-83, 4292, 4465-69, 4478-82, 4496-4504, 6188-94, 7863-94.

64 JA3718-19, 4073, 4498, 4883, 6191.

65 JA3830, 3718-22, 4292, 4073-74, 4498-99, 7882-85.

66 JA3830, 4073-74, 4292, 4498, 7884-85

67 JA3718, 3831, 4478, 4501, 6175-99, 7885-93.

68 JA3716-17, 3827-28, 4281-83, 4466-71, R.1031, Ex. 8, p. 14 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

69 JA4282-83.

70 The other officials of Al Rajhi Bank who are defendant-appellees in this appeal are Abdullah al Rajhi, Saleh al Rajhi, and Sheik Saleh al-Hussayen. Together, these individuals and Suleiman al Rajhi are referred to as the "Al Rajhi Defendants."

71 JA3828, 4281-83, 4465-69.

72 JA2569-70.

73 JA3607, 3836-37, 4334, 4353, 5982-83, 6212; R.1015, Ex. 2, p. 2 (CIA Fact Sheet, *Usama Bin Laden -- Islamic Extremist Fundraiser*).

74 JA3606-08, 3836, 4333-34, 5981, 6164, 6211.

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75 JA3609, 3780, 3838, 3868-69, 4513, 4530-31, 5982, 6212; R.1257, Ex. 4, pp. 16-17, 27 (Arnaout Evidentiary Proffer); R.1030, Ex. P, p. 19 (**9/11** Commission Monograph on Terrorist Financing).

76 JA3607, 4512-15, 4530, 5982, 6212; R.977, Ex. U (December 21, 2004 Press Release from the U.S. Department of the Treasury regarding the designation of Adel Abdul Jalil Batterjee).

77 JA4332, 5988, 6216.

78 JA3812, 3823; R.277, Ex. 5 (January 4, 2002 letter from the U.S. Department of the Treasury to Swiss officials regarding Yousef Nada); R.1031, Ex. 9 (August 29, 2002 Press Release from the U.S. Department of the Treasury regarding the designations of Yousef Nada-related entities); R.1762, Ex. 5, p. 10 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

79 JA3838-39, 4365, 6208-09, 6236.

80 JA3724.

81 The pleadings allege that al Rajhi Bank senior officers Saleh al Rajhi, Suleiman al Rajhi's brother and al Rajhi Bank's Chairman, Abdullah al Rajhi, the bank's General Manager, and Sheikh Saleh al Hussayen, a member of its Sharia Board, also participated directly and knowingly in al Rajhi Bank's sponsorship of al Qaeda. JA828, 3715-18, 4281-83, 4465-69. By virtue of their positions and the pervasive character of al Rajhi Bank's systematic sponsorship of al Qaeda, the allegations concerning their participation in al Rajhi bank's sponsorship of al Qaeda are well founded. *Id*.

82 JA3866-68, 4465-69, 4496-4504; R.1031, Ex. 8, pp. 14-15 (INTERPOL Task Force Report, *Financing of Terrorism and Charities, July 2003*).

83 JA3785-86, 3866-68, 4467, 4500-01, 4529, 6164-65; R.977, Ex. G (Exhibit to Arnaout Evidentiary Proffer -- the "Golden Chain"); R.1762, Ex. 5, p. 6 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

84 JA3785, 4467, 4500-01, 4529, 6164-65.

85 JA3785-86, 4467, 4500-01, 4529, 6164-65; R.1257, Ex. 4, pp. 18-19 (Arnaout Evidentiary Proffer); R.1030, Ex. P, pp. 102-103 (**9/11** Commission Monograph on Terrorist Financing); R.1762, Ex. 5, p. 6 (October 22, 2003 Testimony of Former National Security Advisor Richard A. Clarke before the U.S. Senate Banking Committee).

86 JA4467, 4500-01, 4514-15, 4529, 6164-65; R.977, Ex. E, pp. 23-24 (August 2002 FBI Report -- Interview with former Al Qaeda member Jamal Al Fadl).

87 R.1030, Ex. P, p. 94 (**9/11** Commission Monograph on Terrorist Financing).

88 R.1030, Ex. P, pp. 102-103 (**9/11** Commission Monograph on Terrorist Financing).

89 R.1030, Ex. R, pp. 2-3 (CRS Report for Congress, *Saudi Arabia, Terrorist Financing Issues*, December 8, 2004).

90 JA3831, 3867-68, 4478, 4501, 6188-91, 7867.

91 JA3827-28, 3866-67, 4465-66.

92 **9/11** Commission Final Report, pp. 169-170.

93 JA3785-86.

94 JA3710-14, 3845, 3870-71, 4394-4402.

95 **9/11** Commission Monograph on Terrorist Financing, available at www.9-11commission.gov/staff.../911_TerrFin_Monograph.pdf.

96 JA4394-95, 5982-83, 6212-13.

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97 JA4394.

98 JA3662, 3665, 3671, 3677-81, 4399-4401.

99 JA4024-30.

100 JA3785, 3870, 4318-19, 4529.

101 JA3832-33, 4302-05, 4314-20, 4528-45.

102 JA3870, 4528-45.

103 JA3724-28, 3832-33, 4302-05, 4314-20.

104 The district court dismissed the Burnett ATA claim against Al Rajhi Bank. SPA55-57 (*Terrorist Attacks I*). The district court also dismissed the remaining ATA claims against Al Rajhi Bank brought on behalf of the other plaintiff groups. SPA63, 65-66.

105 SPA99-103 (*SAMBA I*); SPA57-58 (*Terrorist Attacks I*). The district court also denied plaintiffs' motions for leave to amend their pleadings, SPA103-04 (*SAMBA I*), and for reconsideration of the denial of their leave to amend, SPA111-15 (*SAMBA II*). *See infra* 82 n.113.

106 SPA245 (*Terrorist Attacks V*).

107 SPA246-47 (*Terrorist Attacks V*); SPA109-10 (DMI-Kamel); SPA59-60 (*Terrorist Attacks I*).

108 SPA246-47 (*Terrorist Attacks V);* SPA109-10 (DMI-Kamel); SPA59-60 (*Terrorist Attacks I*).

109 *See infra* pp. Point I.C (discussing treatment of support in mid-1990s).

110 *See infra* pp. Point I.B (discussing district court's treatment of pleadings regarding defendants' mental state).

111 SPA245-46 (*Terrorist Attacks V*); SPA106, 110 (*DM-Kamel*); SPA102-03 (*SAMBA I*); SPA55 (*Terrorist Attacks I*).

112 A bank's provision of banking services constitutes material support of terrorism if the services were provided "knowing or intend[ing] that such provision would generally facilitate ... terrorist activities ..." *Wultz*, 755 F. Supp. 2d at 44-46; *see also Linde*, 384 F. Supp. 2d at 588 ("[G]iven plaintiffs' allegations regarding the knowing and intentional nature of the Bank's activities, there is nothing 'routine' about the services the Bank is alleged to provide"); *Weiss*, 453 F. Supp. 2d at 625 ("Where the Bank knows that the groups to which it provides services are engaged in terrorist activities even the provision of basic banking services may qualify as material support" (quotation marks and citation omitted)).

113 Contrary to the district court's findings, SPA112-14 (*SAMBA II*), SPA103-04 (*SAMBA I*), the proposed amendments to plaintiffs' pleadings clearly did sufficiently allege, *inter alia*, that Saudi American Bank had the requisite mental state when it provided material support to Osama bin Laden and al Qaeda. R.1926, pp. 3-6, n.10. Accordingly, if this court finds that the pleadings do not state a claim for relief, this Court should remand this claim for the district court to revisit its denial of the motion for reconsideration of its denial of the motion for leave to amend.

114 This report was published subsequent to the initial briefing below, and submitted in connection with plaintiffs' opposition to NCB's renewed motion to dismiss. However, the facts reflected in the report were of record from the outset, as reflected in plaintiffs" pleadings as to Al Rajhi Bank.

115 The annex lists nine treaties, including the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 December 1971; and the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

116 *See* R.111-2, at 71-74. In the context of the previous appeal as to Saudi Arabia, this Court noted that plaintiffs' allegations concerning the terror sponsorship activities of the Saudi government charities "include a wealth of detail (conscientiously cited to

HOUSE_OVERSIGHT_023414

published and unpublished sources) that, if true, reflect close working arrangements between ostensible charities and terrorist networks, including al Qaeda." *Terrorist Attacks III*, 538 F.3d at 76.

End of Document

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Poetry in America for Teachers II : The Poetry of Earth, Sea, and Sky
(an initiative of Harvard Graduate School of Education, HarvardX and WGBH)

Combining study of poetry with study of science, environment and the visual arts . Materials include hundreds archival images and live footage including

footage of the Mayflower landing taped on Cape Cod—Corn Hill, Pamet Harbor, Snow's Pond, Duck Creek; and, in Nantucket's Whaling Museum

with author Michael Pollan on Joel Barlow (and colonial agriculture)

with economist Lawrence Summers on Oliver Wendell Holmes, (and technology and "one hoss shay" depreciation)

with Vice President Al Gore on Ralph Waldo Emerson ,and, with eco-critic Lawrence Buell (with footage taped on the Concord River as well as in Harvard's Houghton Rare Book Library)

with a dozen Harvard students and Boston area school teachers on Emily Dickinson's "skies" (shot at Emily Dickinson's home in Amherst Massachusetts) and with ED's original mss. at Harvard University

with Martin Espada and other New Yorkers (footage shot on the East River) on Walt Whitman and urban greenspace

with Director of the College Board (and writer of the Common Core Standards) , David Coleman on Robert Frost's "Birches" and with Frost biographer, Jay Parini at Robert Frost's Vermont home in the Green Mountains

with Peter Galison on Einstein and Modernism (taped in the Harvard Scientific Instruments collection in the Harvard Science Center) and with author Walter Isaacson on Einstein and Modernism (Fogg Museum)

with Ray Dalio on Marianne Moore(in Rajah Ampat with Conservation International); and with Jane Pickering, Head of the Harvard Natural History Museum, (filmed in the Harvard Museum of Natural History)

Future planned conversations include: Conversation with Walt Mossberg and David Malan on computer "language" and poetry ; Conversation with Richard Dawkins on evolution and probability; Conversation with actor Harrison Ford on "The Fish"; Conversation with Poet Laureate Robert Hass on Ansel Adams photography ; Conversation with Henry Louis Gates on African-American dialect poetry and the postbellum rural South.

1,000,000 for two television episodes (classroom ready) plus a full credit bearing course Middle and High School Teachers, materials to be tested in New York and Houston Schools by EdLabs

From: Kathy Ruemmler [redacted]
Sent: 9/20/2014 2:37:36 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Fwd:

Importance: High

Did you read David Brooks today?

On Sep 19, 2014 9:58 PM, "Kathy Ruemmler" <[redacted]> wrote:

I will try.

On Sep 19, 2014 8:52 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
try to get a good night sleep. see you sunday

On Fri, Sep 19, 2014 at 8:48 PM, Kathy Ruemmler <[redacted]> wrote:

Harder to say no for sure.

On Sep 19, 2014 8:46 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
I assume that means harder to say no, ? easier to say yes. .

On Fri, Sep 19, 2014 at 8:38 PM, Kathy Ruemmler <[redacted]> wrote:

Both harder and easier. He was there.

On Sep 19, 2014 8:32 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
decision :easier, harder, more complex?

On Fri, Sep 19, 2014 at 8:17 PM, Kathy Ruemmler <[redacted]> wrote:

I have so much more info to tell you on Sunday.

On Sep 19, 2014 8:16 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
how much and who pays now?

On Fri, Sep 19, 2014 at 5:35 PM, Kathy Ruemmler <[redacted]n> wrote:

I will. The rent on the apartment is significantly more than the monthly salary.

On Sep 19, 2014 5:34 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
no need to. call eric and get a data point

On Fri, Sep 19, 2014 at 5:23 PM, Kathy Ruemmler <[redacted]> wrote:

I don't want to give up my apartment in NY.

On Sep 19, 2014 5:18 PM, "Kathy Ruemmler" <k[redacted]> wrote:

Good advice.

On Sep 19, 2014 5:15 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
lets see how you feel sunday

On Fri, Sep 19, 2014 at 5:12 PM, Kathy Ruemmler [redacted]> wrote:

I think I should do it.

On Sep 19, 2014 4:12 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
free now

On Fri, Sep 19, 2014 at 3:46 PM, Kathy Ruemmler <[redacted]> wrote:

Correct. One time, maybe. Twice, no way.

On Sep 19, 2014 3:45 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
of course not , he wouldnt have been so stupid.
---------- Forwarded message ----------
From: **Kathy Ruemmler** <[redacted]>
Date: Fri, Sep 19, 2014 at 3:44 PM
Subject: Re:
To: "jeffrey E." <jeevacation@gmail.com>

Gov is not jewish

On Sep 19, 2014 3:42 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
reid or governor

On Fri, Sep 19, 2014 at 3:02 PM, Kathy Ruemmler <[redacted]> wrote:

Uh, yeah. We will now go through a period of self-reflection and despair.

On Sep 19, 2014 3:00 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
double whoops

On Fri, Sep 19, 2014 at 2:59 PM, Kathy Ruemmler <[redacted]> wrote:

Yep. And now he is a repeat offender.

On Sep 19, 2014 2:58 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
and thats after turning down misdeameors? whoops

On Fri, Sep 19, 2014 at 2:57 PM, Kathy Ruemmler <[redacted]> wrote:

Reid's guy went down on all 7 counts.

On Sep 19, 2014 8:01 AM, "Kathy Ruemmler" <[redacted]> wrote:

Yes, trains exist -- people ride them to get from one place to another.....germ factories, however. DC today, back in NY on Sunday morning.

On Sep 19, 2014 7:57 AM, "jeffrey E." <jeevacation@gmail.com> wrote:
train? yes , i will be like the emergency room doctor at lenox hill, put that crazy in room 1, gunshot in surgery, and the
"cook" welll -- he can wait

On Fri, Sep 19, 2014 at 7:54 AM, Kathy Ruemmler <[redacted]> wrote:

Doesn't look like you are prioritizing your schedule very effectively.....how are you going to manage all of that? this is unga week so the boss will be in town too.....I'll be here all week -- you may get sick of me....just sat down on the train so can't talk freely.

On Sep 19, 2014 7:48 AM, "jeffrey E." <jeevacation@gmail.com> wrote:
"girls?",, careful i will renew an old habit, . this week, thiel, summers,bill burns, gordon brown, jagland, (council of europe and nobel chairman). mongolia pres , hardeep puree (india), boris (gates). jabor (qatar). sultan (dubai,), kosslyn (harvard), leon black, woody. you are a welcome guest at any..... also if you think

there are interesting people in town, everyone here for climate summit , clinton ,security council, holy shit im on [redacted] for next 30 minutes

On Fri, Sep 19, 2014 at 7:15 AM, Kathy Ruemmler <[redacted]n> wrote:

Most girls do not have to worry about this crap.

On Sep 19, 2014 7:09 AM, "jeffrey E." <jeevacation@gmail.com> wrote:

understood. it comes down to high risk / reward / low risk / reward. professional , emotional. and fiinancial

On Fri, Sep 19, 2014 at 6:15 AM, Kathy Ruemmler <[redacted]> wrote:

Agreed, but I need to be prepared to say yes before I talk to him.

Sent from my iPad

On Sep 19, 2014, at 1:21 AM, "jeffrey E." <jeevacation@gmail.com> wrote:

You need to talk to boss

--

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From: Lisa New [redacted]
Sent: 9/23/2014 10:17:55 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Highlight

Importance: High

That was fun- definitely the highlight of a day that was not without other interesting moments

Don't know which was better-- the wholly unexpected surprise reminder (by a prime minister) of my boyfriend from 1976(who was in high school, who lived with his doting parents), or , getting creamed on my producer's budget but then offered the opportunity to profess poetry for production funds . There may be someone as good in New York, but i'll never tell you and you really have a heck of a seminar table there . When do we do Whitman's "Song of Myself" 1-15 Who else is reading with us? I'm ready .

A few other follow ups :

David and Brigid point out that reality tv doesn't cost anything because it is, as it sounds, very low budget . No writing , no special expertise or knowledge or research , no archival footage , no copyright clearance , no actors , no travel beyond the one location , certainly no clinton or woody allen or justice elena kagan or david brooks or Lena Dunham or even Professor New. That said , I think If were hiring the crew id do it for less -- probably 1, 250,000 all in . But I haven't won 10 Emmys and David has . That has value too. As does Wgbh . But I'll be more prepared for the next conversation and want to be much more prepared for templeton, so thank you .

I really liked Michael. I would like to send him some stuff , but in googling him I noticed that we have the same birthday! May I have his email?

You are in! Yeay! Lets see what this may mean? I'll improve my numbers and you'll improve your deep reading ?

Sent from my iPhone

From: Michael Wolff [redacted]]
Sent: 9/24/2014 12:06:54 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Highlight

Importance: High

Fab! And tomorrow?

On Tuesday, September 23, 2014, jeffrey E. <jeevacation@gmail.com> wrote:

clinton woody kagan , do not add one penny to budget

On Tue, Sep 23, 2014 at 6:17 PM, Lisa New <[redacted]> wrote:

That was fun- definitely the highlight of a day that was not without other interesting moments

Don't know which was better-- the wholly unexpected surprise reminder (by a prime minister) of my boyfriend from 1976(who was in high school, who lived with his doting parents), or , getting creamed on my producer's budget but then offered the opportunity to profess poetry for production funds . There may be someone as good in New York, but i'll never tell you and you really have a heck of a seminar table there . When do we do Whitman's "Song of Myself" 1-15 Who else is reading with us? I'm ready .

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Sent from my iPhone

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From: Lisa New [[redacted]
Sent: 9/24/2014 12:25:39 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Highlight

Importance: High

Jeffrey , if you are conceding any bit of the other things , with all due respect, that's exciting, as its new for me to be right about anything in the area of budgets .

As it happens,and as of today , there is huge dissatisfaction in public television world with the lower budget Clinton footage versus the Herbie Hancock footage. David g was there for Herbie and not for Clinton. I can see the difference .the pilot was made for 100, 000 , with savings on the Clinton but it does show

Sent from my iPhone

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From: Lisa New [redacted]
Sent: 9/24/2014 12:48:31 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Highlight

Importance: High

I know, and I'm immensely grateful

. I would like to send you not only the NEH , but a harvard budget for the Ed school initiative with EdLabs. This may take a few days. But I'm on it

Thank you Jeffrey
Lisa

Sent from my iPhone

On Sep 23, 2014, at 8:37 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

I only want you to succeed.. I suggest that as this is charity , the numbers will be scrutinized more heavily. (could have gone for food for homeless etc) please send me the neh proposal that you mentioned. I assume there is a full budget.

On Tue, Sep 23, 2014 at 8:25 PM, Lisa New <[redacted]> wrote:

Jeffrey , if you are conceding any bit of the other things , with all due respect, that's exciting, as its new for me to be right about anything in the area of budgets .

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From: Michael Wolff [redacted]]
Sent: 9/25/2014 1:47:51 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Highlight

Importance: High

See you at 1:00....

On Tue, Sep 23, 2014 at 8:06 PM, jeffrey E. <jeevacation@gmail.com> wrote:
thurs 1

On Tue, Sep 23, 2014 at 8:04 PM, Michael Wolff <[redacted]> wrote:
What time???

On Tuesday, September 23, 2014, jeffrey E. <jeevacation@gmail.com> wrote:
clinton woody kagan , do not add one penny to budget

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Don't know which was better-- the wholly unexpected surprise reminder (by a prime minister) of my boyfriend from 1976(who was in high school, who lived with his doting parents), or , getting creamed on my producer's budget but then offered the opportunity to profess poetry for production funds . There may be someone as good in New York, but i'll never tell you and you really have a heck of a seminar table there . When do we do Whitman's "Song of Myself" 1-15 Who else is reading with us? I'm ready .

A few other follow ups :

David and Brigid point out that reality tv doesn't cost anything because it is, as it sounds, very low budget . No writing , no special expertise or knowledge or research , no archival footage , no copyright clearance , no actors , no travel beyond the one location , certainly no clinton or woody allen or justice elena kagan or david brooks or Lena Dunham or even Professor New. That said , I think If were hiring the crew id do it for less -- probably 1, 250,000 all in . But I haven't won 10 Emmys and David has . That has value too. As does Wgbh . But I'll be more prepared for the next conversation and want to be much more prepared for templeton, so thank you .

I really liked Michael. I would like to send him some stuff , but in googling him I noticed that we have the same birthday! May I have his email?

You are in! Yeay! Lets see what this may mean? I'll improve my numbers and you'll improve your deep reading ?

Sent from my iPhone

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PROPOSAL: ***Poetry in America for Middle and High School Teachers***

A. NATURE OF THE REQUEST

Poetry in America, a collaboration between Elisa New and Programs in Professional Education (PPE) at the Harvard Graduate School of Education (HGSE), will produce courses for national and international distribution to K-12 teachers. Drawing on Elisa New's extensive archive of raw instructional video, HGSE has the goal of providing online graduate-level professional development courses for teachers who have never before had the opportunity to advance their careers online. Teachers will be able to use to this course to strengthen their classroom practice while accumulating credits toward advanced degrees in education. Though American teachers are *required* to take professional development courses, very few of these courses offer teachers *content* support. This initiative will provide such support at a high level, offering Harvard credits and career advancement to participating teachers.

Additionally, this initiative will produce classroom-ready video content designed to engage and educate middle and high school students, thus enabling teachers to bring the content of their professional development directly into the classroom. It will give teachers the confidence and tools to discuss poetry while also meeting English Language Arts standards and providing teachers with professional development opportunities. The first such course, *Poetry of the City*, is already in active development, with its first one-credit module, on the poetry of Walt Whitman, currently entering the post-production stage. The second proposed course (either "The Poetry of Character Development and the Feelings" --concerned with building literacy skills and character awareness-- or "The Poetry of Earth, Sea, and Sky" --concerned with making connections between science and poetry) will enter post-production as soon as funds become available.

In addition to the production team (including an executive director, video editor, media manager, and instructional designer), we are joined by a diverse set of senior partners including:

- **James Ryan**, Dean of the Harvard Graduate School of Education
- **Mary Grassa O'Neill**, Managing Director of HGSE Professional Education and former superintendent of the Archdiocese of Boston and Milton Public Schools
- **Roland Fryer**, Henry Lee Professor of Economics at Harvard, Macarthur "Genius," and founder of the Education Innovation Laboratory
- **Robert Polito**, American academic, critic, poet, and President of The Poetry Foundation.

Our advisory board includes:

- US Poet Laureate **Robert Pinsky**
- Actor **John Lithgow**

- Hip-Hop Artist **Nas**
- distinguished academics and poets from Harvard and elsewhere

Participants and Filmed Conversations include:

- **President Bill Clinton, Herbie Hancock**, poet **Sonia Sanchez**, and children from the **Harlem Children's Zone** on disappointment and discrimination (filmed in Harlem and LA)
- **Nas** on traditions of American urban long-form poetry
- **Lena Dunham** on truth-telling and romantic love (filmed in Brooklyn)
- **Woody Allen** on poetry, sincerity, and morality
- Supreme Court Justice **Elena Kagan** on poetry and the law
- **Vice President Al Gore** on poetry and the environment
- Robert Frost biographer **Jay Parini** with Harvard students on trauma (filmed in Vermont)
- **Alfre Woodard** on Gwendolyn Brooks and rebellion
- **Senator John McCain** on love and loyalty to comrades (filmed in Washington DC)
- **Katie Couric** on grief and self-control
- NBA athletes **Shane Battier** and **Jason Collins** on form and basketball

B. PROJECT ACTIVITIES

The activities of this proposal fall into three major categories: production, post-production, and distribution. The activities involve collaboration between academics, professional course developers, curricular designers and video producers.

Poetry in America has amassed well over one hundred hours of high quality instructional video, including dozens of interpretive conversations with well-known personalities across the professions. Some additional production is expected, and a crew is now assembled to accomplish additional production in a cost effective manner. The post-production stage will involve discussion and planning with the Harvard Graduate School of Education and other educational and media partners based on this current sizeable archive of raw video footage.

At the post-production stage, we will shape and edit the raw footage into curricular content for teachers, and produce classroom-ready video. The post-production team, led by an experienced course developer and producer, will also include a professional videographer/editor with experience in creating high-quality pedagogy, a media manager, and a curriculum design team comprised of an instructional designer and IT specialist. HGSE will develop graduate course materials, including classroom-usable lesson plans, based on video content. Courses offered will include uncoached, lightly coached and fully coached versions of teaching poetry in the classroom. Teachers enrolled in coached versions of the course will receive real-time classroom support by HGSE instructional staff.

The distribution phase will rely heavily on our media and educational partners. Distribution emanates from PPE, which attracts thousands of educators every year to its programs on Harvard's campus, and enrolls thousands of others in its highly successful *WIDE World* courses. Previous offerings of *Poetry in America* courses on edX have attracted over 25,000 learners worldwide.
Other partners include:

- The Poetry Foundation
- WGBH
- The Atlantic
- The Aspen Institute
- The Nantucket Project
- Genius
- Nautilus
- The Big Think
- The Emily Dickinson Museum

New corporate partners include:

- Digital Partners Incorporated
- Adobe
- Netsuite

C: OUTPUTS AND OUTCOMES

This project will eventuate in for-credit professional development materials, developed by the Harvard Graduate School of Education to support relevant educational standards, including but not limited to the Common Core. With funds sufficient to the task, we expect to release two full-credit courses for teachers by Spring 2016. HGSE has a business plan to produce these courses, which they expect will fill a market niche.

D: FUNDING OPTIONS

Funds to support *Poetry in America for Middle and High School Teachers* may be directed to the Harvard Graduate School of Education. There is an HGSE account dedicated to *Poetry in America* that is ready to receive donations.

Alternatively, funds can be donated to Filmmaker's Collaborative, a 501c3 dedicated to supporting independent film and media initiatives such as the *Poetry in America* project. Filmmaker's Collaborative provides low-cost fiscal sponsorship for over 200 media projects across the country, and also offers professional support and public programming. Filmmakers Collaborative allows maximum autonomy and flexibility in the use of resources to support the objectives of the *Poetry in America* project.

Brockman, Inc. 260 Fifth Avenue New York, New York 10001 Tel (212) 935-8900 Fax (212) 935-5535

BROCKMAN, INC. AUCTIONS *NOISE* BY DANIEL KAHNEMAN, OLIVIER SIBONY, AND CASS R. SUNSTEIN 30 MARKETS

New York, NY, Tuesday, March 20, 2018– Max Brockman, CEO of Brockman, Inc. announced today the sale of ***NOISE* by Daniel Kahneman, Olivier Sibony, and Cass R. Sunstein.**

Kahneman, Sibony, and Sunstein were represented in the negotiations by **John Brockman** for US/Canadian rights, and **Max Brockman**, who supervised auctions in the UK and foreign language markets.

According to **Max Brockman**, "We've never seen a week like this in the 45-year history of Brockman, Inc. Thirty auctions were conducted within a week, all setting new agency records for publishing advances in each market and, in many markets, at levels never seen before for a serious nonfiction book."

"This speaks to the remarkable track record of Kahneman's THINKING FAST AND SLOW**,** which has been on *The New York Times* Bestseller List since publication in 2011, with global sales approaching 6 million copies, 2 million of which are in the UK, making it the biggest nonfiction book in the 100-year history of Allen Lane/Penguin."

"Another factor in the extraordinary reaction by publishers worldwide are the expertise and skill sets that Olivier Sibony and Cass Sunstein bring to the project.

According to **Tracy Behar**, VP, Publisher, and Editor-in-Chief of Little, Brown Spark, who acquired US/Canadian rights to the book, "Daniel Kahneman, Olivier Sibony, and Cass Sunstein are three of the greatest thinkers of our time, and I believe ***NOISE*** will be one of our most influential books, with far-reaching applications. It's an honor to be able to publish it."

About the authors:

Daniel Kahneman, author of the bestseller THINKING FAST AND SLOW, is Emeritus Professor of Psychology and Public Affairs at Princeton. He is the winner of the 2002

Nobel Prize in Economic Sciences for his pioneering work integrating insights from psychological research into economic science, especially concerning human judgment and decision making under uncertainty.

Olivier Sibony is a professor, writer, and advisor specializing in the quality of strategic thinking and the design of decision processes. Sibony teaches Strategy, Decision Making, and Problem Solving at HEC Paris. He is also an Associate Fellow of Saïd Business School in Oxford University. Previously, he was a Senior Partner with McKinsey & Company, where he spent 25 years.

Cass R. Sunstein is currently the Robert Walmsley University Professor at Harvard. From 2009 to 2012 he was Administrator of the White House Office of Information and Regulatory Affairs. From 2013 to 2014, he served on President Obama's Review Group on Intelligence and Communication Technologies. From 2016 to 2017, he served on the Defense Innovation Board of the US Department of Defense. He is the author of the bestsellers NUDGE (with Richard H. Thaler) and THE WORLD ACCORDING TO STAR WARS. His two most recent books, IMPEACHMENT: A CITIZEN'S GUIDE and CAN IT HAPPEN HERE? Are reviewed together on the front page of THE NEW YORK TIMES BOOK REVIEW (March 18, 2018). Sunstein is the recipient of the 2018 Holberg prize, awarded annually to a scholar who has made outstanding contributions to research in the arts, humanities, the social sciences, law or theology.

About Brockman, Inc.

Brockman, Inc., established in 1973 by founder **John Brockman**, is the preeminent international literary agency in the representation of serious non-fiction authors who are the leaders of "the third culture", i.e., those scientists and other thinkers in the empirical world who, through their work and expository writing, are taking the place of the traditional intellectual in rendering visible the deeper meanings of our lives, redefining who and what we are."

From: jeffrey E. [jeevacation@gmail.com]
Sent: 9/20/2014 5:29:55 AM
To: Kathy Ruemmler [[redacted]]
Subject: Re:

He is a pseudo intellectual . Friendship is a complex biological process . Part altruism part cooperation , it does not lead to genetic fitness , friends are not inherited with genes . Nick christophalos at kit has done much work . That being said , I get your point

On Friday, September 19, 2014, Kathy Ruemmler <[redacted]> wrote:

Did you read David Brooks today?

On Sep 19, 2014 9:58 PM, "Kathy Ruemmler" <[redacted]> wrote:

I will try.

On Sep 19, 2014 8:52 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

try to get a good night sleep. see you sunday

On Fri, Sep 19, 2014 at 8:48 PM, Kathy Ruemmler <[redacted]> wrote:

Harder to say no for sure.

On Sep 19, 2014 8:46 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

I assume that means harder to say no, ? easier to say yes. .

On Fri, Sep 19, 2014 at 8:38 PM, Kathy Ruemmler <[redacted]> wrote:

Both harder and easier. He was there.

On Sep 19, 2014 8:32 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

decision :easier, harder, more complex?

On Fri, Sep 19, 2014 at 8:17 PM, Kathy Ruemmler <[redacted]> wrote:

I have so much more info to tell you on Sunday.

On Sep 19, 2014 8:16 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

how much and who pays now?

On Fri, Sep 19, 2014 at 5:35 PM, Kathy Ruemmler <[redacted]> wrote:

I will. The rent on the apartment is significantly more than the monthly salary.

On Sep 19, 2014 5:34 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

no need to. call eric and get a data point

On Fri, Sep 19, 2014 at 5:23 PM, Kathy Ruemmler <[redacted]> wrote:

I don't want to give up my apartment in NY.

On Sep 19, 2014 5:18 PM, "Kathy Ruemmler" <[redacted]> wrote:

Good advice.

On Sep 19, 2014 5:15 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

lets see how you feel sunday

On Fri, Sep 19, 2014 at 5:12 PM, Kathy Ruemmler <[redacted]> wrote:

I think I should do it.

On Sep 19, 2014 4:12 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
free now

On Fri, Sep 19, 2014 at 3:46 PM, Kathy Ruemmler <[redacted]m> wrote:

Correct. One time, maybe. Twice, no way.

On Sep 19, 2014 3:45 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
of course not , he wouldnt have been so stupid.
---------- Forwarded message ----------
From: **Kathy Ruemmler** <[redacted]>
Date: Fri, Sep 19, 2014 at 3:44 PM
Subject: Re:
To: "jeffrey E." <jeevacation@gmail.com>

Gov is not jewish

On Sep 19, 2014 3:42 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
reid or governor

On Fri, Sep 19, 2014 at 3:02 PM, Kathy Ruemmler <[redacted]> wrote:

Uh, yeah. We will now go through a period of self-reflection and despair.

On Sep 19, 2014 3:00 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
double whoops

On Fri, Sep 19, 2014 at 2:59 PM, Kathy Ruemmler <[redacted]> wrote:

Yep. And now he is a repeat offender.

On Sep 19, 2014 2:58 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
and thats after turning down misdeameors? whoops

On Fri, Sep 19, 2014 at 2:57 PM, Kathy Ruemmler <[redacted]> wrote:

Reid's guy went down on all 7 counts.

On Sep 19, 2014 8:01 AM, "Kathy Ruemmler" <[redacted]> wrote:

Yes, trains exist -- people ride them to get from one place to another.....germ factories, however. DC today, back in NY on Sunday morning.

On Sep 19, 2014 7:57 AM, "jeffrey E." <jeevacation@gmail.com> wrote:
train? yes , i will be like the emergency room doctor at lenox hill, put that crazy in room 1, gunshot in surgery, and the
"cook" welll -- he can wait

On Fri, Sep 19, 2014 at 7:54 AM, Kathy Ruemmler <[redacted]> wrote:

Doesn't look like you are prioritizing your schedule very effectively.....how are you going to manage all of that? this is unga week so the boss will be in town too.....I'll be here all week -- you may get sick of me....just sat down on the train so can't talk freely.

On Sep 19, 2014 7:48 AM, "jeffrey E." <jeevacation@gmail.com> wrote:

"girls?",, careful i will renew an old habit, . this week, thiel, summers,bill burns, gordon brown, jagland, (council of europe and nobel chairman). mongolia pres , hardeep puree (india), boris (gates). jabor (qatar). sultan (dubai,), kosslyn (harvard), leon black, woody. you are a welcome guest at any..... also if you think there are interesting people in town, everyone here for climate summit , clinton ,security council, holy shit im on [redacted] for next 30 minutes

On Fri, Sep 19, 2014 at 7:15 AM, Kathy Ruemmler <[redacted]> wrote:

Most girls do not have to worry about this crap.

On Sep 19, 2014 7:09 AM, "jeffrey E." <jeevacation@gmail.com> wrote:
understood. it comes down to high risk / reward / low risk / reward. professional , emotional. and fiinancial

On Fri, Sep 19, 2014 at 6:15 AM, Kathy Ruemmler <[redacted]> wrote:
Agreed, but I need to be prepared to say yes before I talk to him.

Sent from my iPad

On Sep 19, 2014, at 1:21 AM, "jeffrey E." <jeevacation@gmail.com> wrote:

You need to talk to boss

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 9/24/2014 12:07:26 AM
To: Michael Wolff [[redacted]]
Subject: Re: Highlight

Importance: High

not sure yet talk in mornig

On Tue, Sep 23, 2014 at 8:06 PM, Michael Wolff <[redacted]> wrote:
Fab! And tomorrow?

On Tuesday, September 23, 2014, jeffrey E. <jeevacation@gmail.com> wrote:
clinton woody kagan , do not add one penny to budget

On Tue, Sep 23, 2014 at 6:17 PM, Lisa New <[redacted]> wrote:
That was fun- definitely the highlight of a day that was not without other interesting moments

Don't know which was better-- the wholly unexpected surprise reminder (by a prime minister) of my boyfriend from 1976(who was in high school, who lived with his doting parents), or , getting creamed on my producer's budget but then offered the opportunity to profess poetry for production funds . There may be someone as good in New York, but i'll never tell you and you really have a heck of a seminar table there . When do we do Whitman's "Song of Myself" 1-15 Who else is reading with us? I'm ready .

A few other follow ups :

David and Brigid point out that reality tv doesn't cost anything because it is, as it sounds, very low budget . No writing , no special expertise or knowledge or research , no archival footage , no copyright clearance , no actors , no travel beyond the one location , certainly no clinton or woody allen or justice elena kagan or david brooks or Lena Dunham or even Professor New. That said , I think If were hiring the crew id do it for less -- probably 1, 250,000 all in . But I haven't won 10 Emmys and David has . That has value too. As does Wgbh . But I'll be more prepared for the next conversation and want to be much more prepared for templeton, so thank you .

I really liked Michael. I would like to send him some stuff , but in googling him I noticed that we have the same birthday! May I have his email?

You are in! Yeay! Lets see what this may mean? I'll improve my numbers and you'll improve your deep reading ?

Sent from my iPhone

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Poetry in America IV: The Poetry of Character Development and the Emotional Life Conversations already taped or scheduled include

with NBA player Jason Collins on Emily Dickinson's on "My Life has Stood a Loaded Gun" and "Tell all the Truth"; with Harvard students on " It would have starved a gnat" and "It got so I could take the Trick" ;with national security expert, Anne Marie Slaughter on "Hope is the Thing with Feathers"; with High School and Middle School teachers on "I'm Nobody" ; (with Annette Bening and Yo Yo Ma) (filmed at the Emily Dickinson Museum, Amherst, in Houghton Rare Book Library and in Hauser Studio

With New York citizens and Boston High School teachers on "Song of Myself" and sense of self (filmed in Brooklyn Bridge Park and in Harvard Yard)

With actress and author Lena Dunham and with spoken word poet, Sarah Kay, on Edna St. Vincent Millay and falling in and out of love (to be filmed in Brooklyn)

With biographer and filmmaker Jay Parini and Harvard students on Frost's "Out! Out" and on trauma (filmed at the Robert Frost historical site, Middlebury Vermont;) and with David Coleman, head of the College Board and writer of the Common Core Standards, on Frost's "Birches" and learning.

With director and actor Woody Allen on William Carlos Williams's "this is just to say" " and on marriage (filmed in Allen's studio) and with poet physician Rafael Campo on Williams and healing

With Alfre Woodard on Gwendolyn Brooks's "song of the front yard " and on obedience to parents (filmed before a live audience in Aspen)

With Rabbi Moshe Waldocks , on Allen Ginsberg's "Kaddish" and ritual (filmed in Hauser studio)

With Bill Clinton, Sonia Sanchez , Herbie Hancock and children from the Harlem Children's Zone on dreaming and disappointment (filmed in Harlem and LA)

With journalist Katie Couric on "One Art" and on grief and self control and with actress Kate Burton on "Elizabeth Bishop's "Poem" and on memory and inheritance

With actor John Lithgow on Frank O'Hara's "Ave Maria" and on adolescent rebellion

With hip hop artist Nas on his own breakthrough album, Illmatic, (and on children and crime)

With NBA player Shane Battier on Edward Hirsch's "Fast Break" and on teamwork and love

With Reverend Jonathan Walton on Wigglesworth's "Day of Doom" and blame

Poetry in America for Teachers II : The Poetry of Earth, Sea, and Sky
(an initiative of Harvard Graduate School of Education, HarvardX and WGBH)

Combining study of poetry with study of science, environment and the visual arts . Materials include hundreds archival images and live footage shot in
Cape Cod, Nantucket, Vermont, New York, Connecticut, Jamaica, Aspen, California, Papua New Guinea including oceans, ponds, marshes, birds, fish mountains, coral reefs, forests as well in some major collections (HMNH etc)

with author Michael Pollan on Joel Barlow (and colonial agriculture)

with economist Lawrence Summers on Oliver Wendell Holmes, (and technology and "one hoss shay" depreciation)

with Harvard students at the Nantucket Whaling Museum and with , John Steele, editor of the science magazine, *Nautlilus*, , on Lowell and Melville

with Vice President Al Gore on Ralph Waldo Emerson ,and, with eco-critic Lawrence Buell (with footage taped on the Concord River as well as in Harvard's Houghton Rare Book Library)

with a dozen Harvard students and Boston area school teachers on Emily Dickinson's "skies" (shot at Emily Dickinson's home in Amherst Massachusetts) and with ED's original mss. at Harvard University

with Martin Espada and other New Yorkers (footage shot on the East River) on Whitman and urban greenspace and with Susan Howe on Stevens and parks

with Richard Dawkins on Frost, evolution and probability and with Jay Parini, Frost biographer, in Frost's cabin on "The Road not Taken".

with Director of the College Board (and writer of the Common Core Standards) , David Coleman on Robert Frost's "Birches" (filmed in a birch grove)

with Peter Galison on Einstein and Modernism (taped in the Harvard Scientific Instruments collection in the Harvard Science Center) and with author Walter Isaacson on Einstein and Modernism (Fogg Museum)

with Ray Dalio on Marianne Moore(in Rajah Ampat with Conservation International); and with Jane Pickering, Head of the Harvard Natural History Museum, (filmed in the Harvard Museum of Natural History)

with Walt Mossberg and David Malan on coding, computer language and L-A-N-G-U-A-G-E poetry

Date: Thursday, December 15 2011 02:57 AM
Subject: Re: The Edge Annual Question 2012 - Invitation (Confidential)
From: John Brockman <[redacted]>
To: jeffrey epstein <jeevacation@gmail.com>;

Keep it coming. JB

On Dec 14, 2011, at 3:47 PM, jeffrey epstein wrote:

> Mathematics ideals are universal truths , biology is intrinsically based in deception . Predators in search of free energy , would be able to decipher and consume , if it weren't couched in a multi layered encrypted form . Even self deception acts as a defensive strategy. More later
>
> Sorry for all the typos .Sent from my iPhone
>
> On Dec 14, 2011, at 3:05 PM, John Brockman <[redacted]> wrote:
>
>> To: Paul Allen, Jeff Bezos, Sergey Brin. Hubert Burda, Steve Case. John Doerr, Jeffrey Epstein, Tony Fadell, Bill Gates, Danny Hillis, Maja Hoffman, Bill Joy, Salar Kamangar, Dean Kamen, Vinod Khosla, Marissa Mayer, Kary Mullis Elon Musk, Nathan Myhrvold, Pierre Omidyar, Larry Page, Sean Parker, Jean Pigozzi, Nick Pritzker, Miuccia Prada, Eric Schmidt, Jacqui Safra, Ricardo Salinas Pilego, Charles Simonyi, Jeff Skoll, Craig Venter, Jimmy Wales, Evan Williams, Mark Zuckerberg
>>
>> Re: The EDGE Annual Question 2012 - Invitation to participate
>>
>> In the summer of 2009, in a talk at the Bristol (UK) Festival of Ideas, Freeman Dyson articulated a vision for the future. He referenced "The Age Of Wonder", by Richard Holmes, in which the first Romantic Age described by Holmes was centered on chemistry and poetry, while Dyson pointed out that this new age is dominated by computational biology. Its leaders, he noted, include "biology wizards" Kary Mullis, Craig Venter, medical engineer Dean Kamen; and "computer wizards" Larry Page and Sergey Brin, and Charles Simonyi. He pointed out that the nexus for this intellectual activity — the Lunar Society for the 21st century — is centered around the activities of EDGE.
>>
>> Dyson continued to articulate his vision for a new age of biology in a related review inNew York Review of Books in which he wrote: "...a new generation of artists, writing genomes as fluently as Blake and Byron wrote verses, might create an abundance of new flowers and fruit and trees and birds to enrich the ecology of our planet. Most of these artists would be amateurs, but they would be in close touch with science, like the poets of the earlier Age of Wonder. The new Age of Wonder might bring together wealthy entrepreneurs like Venter and Kamen ... and a worldwide community of gardeners and farmers and breeders, working together to make the planet beautiful as well as fertile, hospitable to hummingbirds as well as to humans."
>>
>> So, along these lines, who can best articulate the important issues questions we face today than the very people who are, through their ideas and entrepreneurial zeal, changing the very nature of reality itself. Here's the 2012 Annual Question. Before sending it out widely to the list, it's useful to seed the project with a dozen or so interesting responses to provide examples and set a high bar. Even better, to inspire. How about it?? Hope to hear from you. JB
>>
>>
>> THE WORLD QUESTION CENTER
>>
>> 2012: WHAT IS YOUR FAVORITE DEEP, ELEGANT, OR BEAUTIFUL EXPLANATION?
>>
>> http://edge.org/annual- question/what-is-your-favorite-deep-elegant-or-beautiful-explanation&view=draft

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>>
>> PRESS EMBARGO UNTIL PUBLICATION (12am EST, Sunday, January 15th). DO NOT CITE OR CIRCULATE
>>
>> ----------
>>
>> "We'd certainly be better off if everyone sampled the fabulous EDGE symposium, which, like the best in science, is modest and daring all at once."
>>
>> — David Brooks, THE NEW YORK TIMES
>> ----------
>> ----------
>>
>> Scientists' greatest pleasure comes from theories that derive the solution to some deep puzzle from a small set of simple principles in a surprising way. These explanations are called "beautiful" or "elegant". Historical examples are Kepler's explanation of complex planetary motions as simple ellipses, Bohr's explanation of the periodic table of the elements in terms of electron shells, and Watson and Crick's double helix. Einstein famously said that he did not need experimental confirmation of his general theory of relativity because it "was so beautiful it had to be true."
>>
>> The EDGE Question 2012
>>
>> WHAT IS YOUR FAVORITE DEEP, ELEGANT, OR BEAUTIFUL EXPLANATION?
>>
>> Since this question is about explanation, answers may embrace scientific thinking in the broadest sense: as the most reliable way of gaining knowledge about anything, including other fields of inquiry such as philosophy, mathematics, economics, history, political theory, literary theory, or the human spirit. The only requirement is that some simple and non-obvious idea explain some diverse and complicated set of phenomena.
>>
>> [Thanks to Steven Pinker for suggesting this year's EDGE Question and to Stewart Brand, Kevin Kelly, and George Dyson for their ongoing advice and support.]
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>>
>> "Open-minded, free ranging, intellectually playful ... an unadorned pleasure in curiosity, a collective expression of wonder at the living and inanimate world ... an ongoing and thrilling colloquium."
>>
>> —Ian McEwan in THE TELEGRAPH
>>
>> ----------
>>
>> SUBMITTING ESSAYS: Email as text or attached Word file to me (brockman@edge.org).
>>
>> DUE DATE: 5pm, Thursday, January 12th
>>
>> PUBLICATION DATE: 12am EST, Sunday, January 15th
>>
>> URL: Essays will be posted at this draft URL (not visible to search engines). Please keep confidential.
>>
>> PRESS EMBARGO: Until publication. Do not cite or circulate.

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>>
>> EDITORIAL MARCHING ORDERS
>>
>> Of course, your own explanations are deep, elegant, and beautiful. But give it a rest for this exercise and please avoid citing your own theory, idea, explanation. Also, think of examples that are not completely obvious—we don't want a hundred people nominating natural selection, or relativity, or Turing machines.
>>
>> Say something new, true, and interesting based on your own experience, in 1,000 words or less.
>>
>> Go deeper than the news. Tell us something we don't know. This is not a purely scientific question: this is question about our culture and ourselves. The ideas we present on EDGE can offer a new set of metaphors to describe ourselves, our minds, the way we think, the world, and all of the things we know in it.
>>
>> As usual, no politics ("Democrat" "Republican") or politicians ("Obama" "Romney" "Clinton" "Gingrich", etc.). No editorials, Op-eds, opinion pieces, flippancy. No ad hominem comments. No self-promotion: no referencing your books, papers, courses. No "selling from the stage", pushing your well-known agenda. No footnotes, credits, or hyperlinks in the text: stay on the page. No anecdotes about spouses, significant others, kids, family pets. Write a stand-alone piece: don't respond to the pieces of other contributors already posted.
>>
>> This is the annual opportunity for the EDGE community to give something back, to provide an important public service, to make a statement by presenting uncompromisingly sophisticated science-minded thinking to a wide global audience. Be imaginative, exciting, compelling, inspiring. Tell a great story. Make an argument that makes a difference. Amaze and delight. Surprise us!
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>> TO THE EDGE PRESS LIST
>>
>> Last year's EDGE Question ("What Scientific Concept Would Improve Everybody's Cognitive Toolkit?" - http://goo.gl/bEzNP - generated 165 essays (115,000 words) and received global press attention - http://goo.gl/Ygxs7
>>
>> For some background on how the EDGE Annual Questions comes together, check out "A Big Question", an article I wrote for the Nieman Foundation in 2010 - http://goo.gl/udnZg
>> We expect at least as many contributions this year. Please feel free use up to 1,500 words of text (gratis) without further permission, provided that:
>>
>> (a) EDGE and its URL (www.edge.org) are mentioned in the first paragraph of your print and online piece; and
>>
>> (b) a hyperlink to the EDGE home page (http://www.edge.org) is provided in the first paragraph of your online edition.
>>
>> Edge Foundation, Inc. is a nonprofit private operating foundation under Section 501(c)(3) of the Internal Revenue Code.
>>
>>
>> Happy New Year!
>>
>> John Brockman
>> Editor & Publisher

>> [redacted]
>> [redacted]
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>>
>> It's ever more delectable that EDGE-the network of prominent scientists and intellectuals— has worked against the reciprocal ignorance of literary cultures and sciences of each other. Successfully. If you take the algorithms developed by Larry Page and Sergey Brin, which measure the value of links, EDGE'S website ranks seven on a global scale of ten. THE NEW YORK TIMES ranks nine, eBay at eight.
>>
>> — SUEDDEUTSCHE ZEITUNG
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17 April, 2011

Article 1.	Wall Street Journal **The New Cold War** Bill Spindle and Margaret Coker
Article 2.	The New York Post **The storm in Syria** Amir Taheri
Article 3.	The American Interest **Political Order in Egypt** Francis Fukuyama
Article 4.	NYT **The Budget Debate, Revealed** Richard W. Stevenson

Article 1.

Wall Street Journal

The New Cold War

Bill Spindle and Margaret Coker

APRIL 16, 2011 -- For three months, the Arab world has been awash in protests and demonstrations. It's being called an Arab Spring, harking back to the Prague Spring of 1968.

But comparison to the short-lived flowering of protests 40 years ago in Czechoslovakia is turning out to be apt in another way. For all the attention the Mideast protests have received, their most notable impact on the region thus far hasn't been an upswell of democracy. It has been a dramatic spike in tensions between two geopolitical titans, Iran and Saudi Arabia.

This new Middle East cold war comes complete with its own spy-versus-spy intrigues, disinformation campaigns, shadowy proxy forces, supercharged state rhetoric—and very high stakes.

"The cold war is a reality," says one senior Saudi official. "Iran is looking to expand its influence. This instability over the last few months means that we don't have the luxury of sitting back and watching events unfold."

On March 14, the Saudis rolled tanks and troops across a causeway into the island kingdom of Bahrain. The ruling family there, long a close Saudi ally, appealed for assistance in dealing with increasingly large protests. Iran soon rattled its own sabers. Iranian parliamentarian Ruhollah Hosseinian urged the Islamic Republic to put its military forces on high alert, reported the website for Press TV, the state-run English-language news agency. "I believe that the Iranian government should not be reluctant to prepare the country's military forces at a time that Saudi Arabia has dispatched its troops to Bahrain," he was quoted as saying.

The intensified wrangling across the Persian—or, as the Saudis insist, the Arabian—Gulf has strained relations between the U.S. and important Arab allies, helped to push oil prices into triple digits and tempered U.S. support for some of the popular democracy movements in the Arab world. Indeed, the first casualty of the Gulf showdown has been two of the liveliest democracy movements in countries right on the fault line, Bahrain and the turbulent frontier state of Yemen. But many worry that the toll could wind up much

worse if tensions continue to ratchet upward. They see a heightened possibility of actual military conflict in the Gulf, where one-fifth of the world's oil supplies traverse the shipping lanes between Saudi Arabia and Iran. Growing hostility between the two countries could make it more difficult for the U.S. to exit smoothly from Iraq this year, as planned. And, perhaps most dire, it could exacerbate what many fear is a looming nuclear arms race in the region.

Iran has long pursued a nuclear program that it insists is solely for the peaceful purpose of generating power, but which the U.S. and Saudi Arabia believe is really aimed at producing a nuclear weapon. At a recent security conference, Prince Turki al Faisal, a former head of the Saudi intelligence service and ambassador to the U.K. and the U.S., pointedly suggested that if Iran were to develop a weapon, Saudi Arabia might well feel pressure to develop one of its own.

The Saudis currently rely on the U.S. nuclear umbrella and on antimissile defense systems deployed throughout the Persian Gulf region. The defense systems are intended to intercept Iranian ballistic missiles that could be used to deliver nuclear warheads. Yet even Saudis who virulently hate Iran have a hard time believing that the Islamic Republic would launch a nuclear attack against the birthplace of their prophet and their religion. The Iranian leadership says it has renounced the use of nuclear weapons.

How a string of hopeful popular protests has brought about a showdown of regional superpowers is a tale as convoluted as the alliances and history of the region. It shows how easily the old Middle East, marked by sectarian divides and ingrained rivalries, can re-emerge and stop change in its tracks.

There has long been bad blood between the Saudis and Iran. Saudi Arabia is a Sunni Muslim kingdom of ethnic Arabs, Iran a Shiite Islamic republic populated by ethnic Persians. Shiites first broke with Sunnis over the line of succession after the death of the Prophet

Mohammed in the year 632; Sunnis have regarded them as a heretical sect ever since. Arabs and Persians, along with many others, have vied for the land and resources of the Middle East for almost as long. These days, geopolitics also plays a role. The two sides have assembled loosely allied camps. Iran holds in its sway Syria and the militant Arab groups Hezbollah in Lebanon and Hamas in the Palestinian territories; in the Saudi sphere are the Sunni Muslim-led Gulf monarchies, Egypt, Morocco and the other main Palestinian faction, Fatah. The Saudi camp is pro-Western and leans toward tolerating the state of Israel. The Iranian grouping thrives on its reputation in the region as a scrappy "resistance" camp, defiantly opposed to the West and Israel.

For decades, the two sides have carried out a complicated game of moves and countermoves. With few exceptions, both prefer to work through proxy politicians and covertly funded militias, as they famously did during the long Lebanese civil war in the late 1970s and 1980s, when Iran helped to hatch Hezbollah among the Shiites while the Saudis backed Sunni militias.

But the maneuvering extends far beyond the well-worn battleground of Lebanon. Two years ago, the Saudis discovered Iranian efforts to spread Shiite doctrine in Morocco and to use some mosques in the country as a base for similar efforts in sub-Saharan Africa. After Saudi emissaries delivered this information to King Hassan II, Morocco angrily severed diplomatic relations with Iran, according to Saudi officials and cables obtained by the organization WikiLeaks.

As far away as Indonesia, the world's most populous Muslim country, the Saudis have watched warily as Iranian clerics have expanded their activities—and they have responded with large-scale religious programs of their own there. The 1979 Iranian revolution was a major eruption that still looms large in the psyches of both nations. It

explicitly married Shiite religious zeal with historic Persian ambitions and also played on sharply anti-Western sentiments in the region. Iran's clerical regime worked to spread the revolution across the Middle East; Saudi Arabia and its allies worried that it would succeed. For a time it looked like it might. There were large demonstrations and purported antigovernment plots in Saudi Arabia's Eastern Province, which has a large population of Shiite Muslim Arabs, and in Bahrain, where Shiites are a distinct majority and Iran had claimed sovereignty as recently as 1970.

The protests that began this past January in Tunisia had nothing to do with any of this. They started when a struggling street vendor in that country's desolate heartland publicly set himself on fire after a local officer cited his cart for a municipal violation. His frustration, multiplied hundreds of thousands times, boiled over in a month of demonstrations against Tunisian President Zine al-Abidine Ben Ali. To the amazement of the Arab world, Mr. Ben Ali fled the country when the military declined to back him by brutally putting down the demonstrations.

Spurred on by televised images and YouTube videos from Tunisia, protests broke out across much of the rest of the Arab world. Within weeks, millions were on the streets in Egypt and Hosni Mubarak was gone, shown the door in part by his longtime backer, the U.S. government. The Obama administration was captivated by this spontaneous outbreak of democratic demands and at first welcomed it with few reservations. In Riyadh, Saudi officials watched with alarm. They became furious when the Obama administration betrayed, to Saudi thinking, a longtime ally in Mr. Mubarak and urged him to step down in the face of the street demonstrations.

The Egyptian leader represented a key bulwark in what Riyadh perceives as a great Sunni wall standing against an expansionist Iran. One part of that barrier had already crumbled in 2003 when the U.S.

invasion of Iraq toppled Saddam Hussein. Losing Mr. Mubarak means that the Saudis now see themselves as the last Sunni giant left in the region.

The Saudis were further agitated when the protests crept closer to their own borders. In Yemen, on their southern flank, young protesters were suddenly rallying thousands, and then tens of thousands, of their fellow citizens to demand the ouster of the regime, led by President Ali Abdullah Saleh and his family for 43 years. Meanwhile, across a narrow expanse of water on Saudi Arabia's northeast border, protesters in Bahrain rallied in the hundreds of thousands around a central roundabout in Manama. Most Bahraini demonstrators were Shiites with a long list of grievances over widespread economic and political discrimination. But some Sunnis also participated, demanding more say in a government dominated by the Al-Khalifa family since the 18th century.

Protesters deny that their goals had anything to do with gaining sectarian advantage. Independent observers, including the U.S. government, saw no sign that the protests were anything but homegrown movements arising from local problems. During a visit to Bahrain, Secretary of Defense Robert Gates urged the government to adopt genuine political and social reform.

But to the Saudis, the rising disorder on their borders fit a pattern of Iranian meddling. A year earlier, they were convinced that Iran was stoking a rebellion in Yemen's north among a Shiite-dominated rebel group known as the Houthis. Few outside observers saw extensive ties between Iran and the Houthis. But the Saudis nonetheless viewed the nationwide Yemeni protests in that context. In Bahrain, where many Shiites openly nurture cultural and religious ties to Iran, the Saudis saw the case as even more open-and-shut. To their ears, these suspicions were confirmed when many Bahraini protesters moved beyond demands for greater political and economic participation and

began demanding a constitutional monarchy or even the outright ouster of the Al-Khalifa family. Many protesters saw these as reasonable responses to years of empty promises to give the majority Shiites a real share of power—and to the vicious government crackdown that had killed seven demonstrators to that point.

But to the Saudis, not to mention Bahrain's ruling family, even the occasional appearance of posters of Lebanese Hezbollah leader Hassan Nasrallah amid crowds of Shiite protesters pumping their fists and chanting demands for regime change was too much. They saw how Iran's influence has grown in Shiite-majority Iraq, along their northern border, and they were not prepared to let that happen again.

As for the U.S., the Saudis saw calls for reform as another in a string of disappointments and outright betrayals. Back in 2002, the U.S. had declined to get behind an offer from King Abdullah (then Crown Prince) to rally widespread Arab recognition for Israel in exchange for Israel's acceptance of borders that existed before the 1967 Six Day War—a potentially historic deal, as far as the Saudis were concerned. And earlier this year, President Obama declined a personal appeal from the king to withhold the U.S. veto at the United Nations from a resolution condemning continued Israeli settlement building in Jerusalem and the West Bank.

The Saudis believe that solving the issue of Palestinian statehood will deny Iran a key pillar in its regional expansionist strategy—and thus bring a win for the forces of Sunni moderation that Riyadh wants to lead.

Iran, too, was starting to see a compelling case for action as one Western-backed regime after another appeared to be on the ropes. It ramped up its rhetoric and began using state media and the regional Arab-language satellite channels it supports to depict the pro-democracy uprisings as latter-day manifestations of its own revolution in 1979. "Today the events in the North of Africa, Egypt,

Tunisia and certain other countries have another sense for the Iranian nation.… This is the same as 'Islamic Awakening,' which is the result of the victory of the big revolution of the Iranian nation," said Ayatollah Ali Khamenei.

Iran also broadcast speeches by Hezbollah's leader into Bahrain, cheering the protesters on. Bahraini officials say that Iran went further, providing money and even some weapons to some of the more extreme opposition members. Protest leaders vehemently deny any operational or political links to Iran, and foreign diplomats in Bahrain say that they have seen little evidence of it.

March 14 was the critical turning point. At the invitation of Bahrain, Saudi armed vehicles and tanks poured across the causeway that separates the two countries. They came representing a special contingent under the aegis of the Gulf Cooperation Council, a league of Sunni-led Gulf states, but the Saudis were the major driver. The Saudis publicly announced that 1,000 troops had entered Bahrain, but privately they concede that the actual number is considerably higher.

If both Iran and Saudi Arabia see themselves responding to external threats and opportunities, some analysts, diplomats and democracy advocates see a more complicated picture. They say that the ramping up of regional tensions has another source: fear of democracy itself.

Long before protests ousted rulers in the Arab world, Iran battled massive street protests of its own for more than two years. It managed to control them, and their calls for more representative government or outright regime change, with massive, often deadly, force. Yet even as the government spun the Arab protests as Iranian inspired, Iran's Green Revolution opposition movement managed to use them to boost their own fortunes, staging several of their best-attended rallies in more than a year.

Saudi Arabia has kept a wary eye on its own population of Shiites, who live in the oil-rich Eastern Province directly across the water

from Bahrain. Despite a small but energetic activist community, Saudi Arabia has largely avoided protests during the Arab Spring, something that the leadership credits to the popularity and conciliatory efforts of King Abdullah. But there were a smattering of small protests and a few clashes with security services in the Eastern Province.

The regional troubles have come at a tricky moment domestically for Saudi Arabia. King Abdullah, thought to be 86 years old, was hospitalized in New York, receiving treatment for a back injury, when the Arab protests began. The Crown Prince, Sultan bin Abdul Aziz, is only slightly younger and is already thought to be too infirm to become king. Third in line, Prince Nayaf bin Abdul Aziz, is around 76 years old.

Viewing any move toward more democracy at home—at least on anyone's terms but their own—as a threat to their regimes, the regional superpowers have changed the discussion, observers say. The same goes, they say, for the Bahraini government. "The problem is a political one, but sectarianism is a winning card for them," says Jasim Husain, a senior member of the Wefaq Shiite opposition party in Bahrain.

Since March 14, the regional cold war has escalated. Kuwait expelled several Iranian diplomats after it discovered and dismantled, it says, an Iranian spy cell that was casing critical infrastructure and U.S. military installations. Iran and Saudi Arabia are, uncharacteristically and to some observers alarmingly, tossing direct threats at each other across the Gulf. The Saudis, who recently negotiated a $60 billion arms deal with the U.S. (the largest in American history), say that later this year they will increase the size of their armed forces and National Guard.

And recently the U.S. has joined in warning Iran after a trip to the region by Defense Secretary Gates to patch up strained relations with

Arab monarchies, especially Saudi Arabia. Minutes after meeting with King Abdullah, Mr. Gates told reporters that he had seen "evidence" of Iranian interference in Bahrain. That was followed by reports from U.S. officials that Iranian leaders were exploring ways to support Bahraini and Yemeni opposition parties, based on communications intercepted by U.S. spy agencies.

Saudi officials say that despite the current friction in the U.S.-Saudi relationship, they won't break out of the traditional security arrangement with Washington, which is based on the understanding that the kingdom works to stabilize global oil prices while the White House protects the ruling family's dynasty. Washington has pulled back from blanket support for democracy efforts in the region. That has bruised America's credibility on democracy and reform, but it has helped to shore up the relationship with Riyadh.

Rising Tensions in the Gulf

A look at the Sunni-Shiite divide in the Middle East and some of the key flashpoints in the cold war between Saudi Arabia and Iran

The deployment into Bahrain was also the beginning of what Saudi officials describe as their efforts to directly parry Iran. While Saudi troops guard critical oil and security facilities in their neighbor's land, the Bahraini government has launched a sweeping and often brutal crackdown on demonstrators.

It forced out the editor of the country's only independent newspaper. More than 400 demonstrators have been arrested without charges, many in violent night raids on Shiite villages. Four have died in custody, according to human-rights groups. Three members of the national soccer team, all Shiites, have also been arrested. As many as 1,000 demonstrators who missed work during the protests have been fired from state companies.

In Shiite villages such as Saar, where a 14-year-old boy was killed by police and a 56-year-old man disappeared overnight and showed up

dead the next morning, protests have continued sporadically. But in the financial district and areas where Sunni Muslims predominate, the demonstrations have ended.

In Yemen, the Saudis, also working under a Gulf Cooperation Council umbrella, have taken control of the political negotiations to transfer power out of the hands of President Ali Abdullah Saleh, according to two Saudi officials.

"We stayed out of the process for a while, but now we have to intervene," said one official. "It's that, or watch our southern flank disintegrate into chaos."

Article 2.

The New York Post

The storm in Syria

Amir Taheri

April 16, 2011 -- Yesterday was supposed to be the first day of what Syrian despot Ba shar al-Assad had dubbed "social calm"; he hoped his mixture of promises and repressive measures would silence the pro-democracy uprising that has shaken the Ba'athist regime. Instead, the opposition mounted a "Friday of Resolution," with fresh nationwide marches against tyranny.

In addition to other empty moves, Assad had ordered the release of protesters arrested in the past four weeks provided they had not done "anything that might undermine the interests of the state and the nation's security." Those qualifiers meant that by yesterday evening only nine people had been set free, out of an estimated 1,200 arrested in 18 cities -- and scores more were arrested yesterday.

To be sure, the opposition didn't succeed in organizing a major march in the capital. But a crowd of no more than 600 marched from Damascus to the nearby town of Douma, where security forces have killed at least 30 demonstrators in the past two weeks.

Yesterday was a success for the opposition. It managed to defy the massive security buildup to hold demonstrations in at least 20 cities, underlining its nationwide appeal. It also managed to show its presence in Aleppo, the country's second most populous city, which had remained relatively quiet until now.

Also significant were the first demonstrations in the Druze areas, which had never before shown any sign of revolt against the Assad dynasty. Yesterday, Syria's biggest Druze city, Suwaidah, became an "Assad-free" zone as portraits of the despot and his father were burned in public.

With the Druze joining the uprising, all of Syria's dozen or so ethnic and religious communities are now marching under the banner of revolt against the Assad dynasty.

More important, perhaps, the day brought the first signs that at least parts of the security forces may be reluctant to shoot demonstrators in the street. According to my sources, security men have shot at least three soldiers on the spot for "disobedience."

"These were cold-blooded executions in the street," one source tells me. "The soldiers had refused to fire on marchers. They were killed by men from the Alawite minority to which Assad belongs."

Two of the three soldiers shot have been identified as Muhammad Awadh Qanbar and Murad Hajoo, who died in Maddiyah. A third soldier was shot in the port city of Banias.

In Tartus, Der'aah and the Kurdish city of Qamishli, Alawite elite units have replaced the regular army with orders to crush the demonstrations.

Some special Alawite units, known as al-Ashbah or "ghosts," appear in civilian clothes to kill demonstrators at random. The tactic is meant to terrorize the opposition, forcing it to stop its almost daily protests.

These terror tactics are starting to radicalize the opposition, but some groups still hope to reach a peaceful way out of the crisis. Several human-rights groups have joined in the Damascus Declaration, calling for a negotiated departure of Bashar al-Assad and his entourage with the Syrian army acting as an interim government.

Other groups, however, insist that the opposition is willing and able to set up a transitional authority and hold free elections, with the army ensuring the country's security.

The Assad clan is trying to convince the outside world, including the United States and the European Union, that the regime's fall could lead to chaos and sectarian wars. It claims the opposition is either too

divided to form a government, or might fall under the domination of the Muslim Brotherhood.

Pro-democracy activists reject those claims. They tell me that they've been trying to establish formal contacts with both the US and EU to help the major democracies "acquire a more balanced view of the situation."

"Assad's voice is not the only one that comes out of Syria," says Wassim Turayf, a spokesman for the protesters. "The outside world should listen to other voices."

Article 3.

The American Interest

Political Order in Egypt

Francis Fukuyama

May - June 2011 -- While academic political science has not had much to tell policymakers of late, there is one book that stands out as being singularly relevant to the events currently unfolding in Tunisia, Egypt and other Middle Eastern countries: Samuel Huntington's Political Order in Changing Societies, first published over forty years ago.1 Huntington was one of the last social scientists to try to understand the linkages between political, economic and social change in a comprehensive way, and the weakness of subsequent efforts to maintain this kind of large perspective is one reason we have such difficulties, intellectually and in policy terms, in keeping up with our contemporary world.

Huntington, observing the high levels of political instability plaguing countries in the developing world during the 1950s and 1960s, noted that increasing levels of economic and social development often led to coups, revolutions and military takeovers rather than a smooth transition to modern liberal democracy. The reason, he pointed out, was the gap that appeared between the hopes and expectations of newly mobilized, educated and economically empowered people on the one hand, and the existing political system, which did not offer them an institutionalized mechanism for political participation, on the other. He might have added that such poorly institutionalized regimes are also often subject to crony capitalism, which fails to provide jobs and incomes to the newly educated middle class. Attacks against the existing political order, he noted, are seldom driven by the poorest of the poor; they instead tend to be led by rising middle classes who are frustrated by the lack of political and economic opportunity—a

phenomenon noted by Alexis de Tocqueville in his masterful analysis of the origins of the French Revolution and raised again in the early 1960s by James Davies's well known "J-curve" theory of revolution.2

Something like this Huntingtonian process has unfolded in recent months in both Tunisia and Egypt. In both cases, anti-government protests were led not by the urban poor or by an Islamist underground, but by relatively well-educated middle-class young people used to communicating with each other via Facebook and Twitter. It is no accident that Wael Ghonim, Google's regional head of marketing, emerged as a symbol and leader of the new Egypt. The protesters' grievances centered around the fact that the authoritarian regimes of Ben Ali and Mubarak offered them no meaningful pathway to political participation, as well as failing to provide jobs befitting their social status. The protests were then joined by other groups in both societies—trade unionists, Islamists, peasants and virtually everyone else unhappy with the old regimes—but the driving force remained the more modern segments of Tunisian and Egyptian society.

Societies lacking institutions that could accommodate new social actors produced a condition Huntington labeled praetorianism, in which political participation took the form of strikes, demonstrations, protests and violence. The military often seized power in such circumstances because it was the only organized actor in society capable of running a government. The Egyptian Republic's first autocrat, Gamal Abdel Nasser, came to power in precisely this manner back in July 1952, when his Free Officers movement represented the rising Egyptian middle class. The tragedy of modern Egypt is that there has been scarcely any meaningful political development in the more than half-century since then—meaning, in

Huntington's terms, the rise of modern institutions that could peacefully channel citizen participation.

Socioeconomic development, meanwhile, has proceeded apace: Between 1990–2010 Tunisia's Human Development Index (a composite measure of health, education and income compiled by the UN) rose 30 percent, while Egypt's rose 28 percent. Both countries produced tens of thousands of college graduates with no discernable future and a lopsided income distribution in which a disproportionate share of the gains from growth went to a small group of politically connected insiders. Huntington's analysis of Egypt in the 1950s and 1960s thus remains eerily relevant today.

In Political Order Huntington was also making a broader point about the process of development itself. The significance of his book needs to be seen against the backdrop of post-World War II modernization theory, which in turn drew on classic 19th-century European social theory articulated by academics like Edward Shils, Talcott Parsons and Walt W. Rostow. American modernization theory argued that development was a single, seamless process. Economic development, changing social relationships like the breakdown of extended kinship groups and the growth of individualism, higher and more inclusive levels of education, normative shifts toward values like "achievement" and rationality, secularization and the growth of democratic political institutions, were all seen as an interdependent whole.

By pointing out that the good things of modernity did not necessarily go together, Huntington played a key role in killing off modernization theory. Political development was a separate process from socioeconomic development, he argued, and needed to be understood in its own terms. The conclusion that flowed from this point of view seemed at the time counterintuitive to the point of stunning: Without political development, the other aspects of

modernization could lead to bad results—to tyranny, civil war and mass violence.

There were other reasons why Western modernization theory fell into disrepute by the 1970s: It came to be regarded as too Eurocentric—indeed, as too Americentric insofar as it seemed to posit American society as the pinnacle of modernization. It failed to recognize the possibility that countries like Japan and China might take roads to modernity that would look very different from the ones pioneered by Britain and the United States. But even if one agreed that the end point of development should be some form of industrialized liberal democracy, Huntington made it clear that arriving at the desired destination was far more elusive and complicated than modernization theorists believed.

The central piece of policy advice that emerged out of Huntington's work was the concept of the "authoritarian transition." If political systems opened up to democratic contestation too early, before the development of political parties, labor unions, professional associations and other organizations that could structure participation, the result could be chaotic. Authoritarian regimes that could maintain order and promote economic growth, Huntington argued, might oversee a more gradual institutionalization of society, and make a transition to democracy only when broad participation could be peacefully accommodated. This form of sequencing, in which economic development was promoted before a democratic opening, was the path followed by Asian countries like South Korea and Taiwan, which made democratic transitions in the late 1980s only after they had succeeded in turning themselves into industrialized powerhouses. It was also the development strategy recommended by Huntington's former student Fareed Zakaria, as well as by the leaders of many authoritarian governments, who liked the idea of economic growth better than the idea of democratic participation.3 We will

return to the question of how well that strategy worked in the Middle East later.

Development in Silos

As interesting and important as Huntington's work was, it lay outside of mainstream thinking about development, which from the start was a highly Balkanized academic field that was dominated by economists. Few scholars have sought to understand development as an inter-connected process with political, economic and social parts. Development economists looked primarily at economic factors like capital, labor and technology as sources of economic growth, and thought neither about the consequences of growth for politics nor the relationship of political institutions to growth. The Harrod-Domar growth model that was dominant in the 1950s suggested that less-developed countries were poor primarily because they lacked capital, which then led development agencies like the World Bank to try to kick start growth with generous infusions of capital for physical infrastructure. It was only when steel plants and shoe factories in sub-Saharan Africa went idle due to corruption or lack of organizational capacity that they were forced to go back to the drawing board.

The political scientists, for their part, scaled back their ambitions from large Huntingtonian-style theory and focused primarily on political phenomena. Beginning in the 1980s, there was increasing interest in the problem of transitions into and out of democracy; with democratic transitions in Spain, Portugal and nearly all of Latin America, this became a particularly pressing issue. There was some revival of interest in the democracy-development linkage, but it never led to a clear consensus on the causal links connecting the two phenomena.

The academic interest in transitions corresponded to the burgeoning of democracy promotion as a distinct field of international practice, both on the part of the United States and of other democracies around

the world. The idea was planted during the 1970s, when the institutes linked with the German political parties played a key role in beating back an attempted Communist takeover in Portugal and facilitating that country's transition to democracy. The 1980s saw the establishment of the National Endowment for Democracy (NED), a taxpayer-funded but quasi-independent organization devoted to support of pro-democracy groups around the world. One of the NED's early successes was its funding of the Solidarity trade union in Poland before the collapse of communism. The 1990s saw the growth of a host of international organizations capable of monitoring elections and the funding of the Democracy and Governance branch of the U.S. Agency for International Development to the tune of almost $1.5 billion annually.

By the late 1990s, there was some degree of convergence in the agendas of economists and political scientists. By that point Douglass North and the school of "New Institutional Economics" he founded made economists aware of the importance of political institutions—particularly property rights—for economic growth. Economists increasingly sought to fold political variables like legal systems and checks on executive power into their models. Political science had itself been colonized at this point by economic methodology, and it was natural for such rational-choice political scientists to start looking at the economic impact of political institutions.

The return to a more interdisciplinary approach to development was marked as well by the tenure of James Wolfenson as President of the World Bank from 1995 to 2005.4 Wolfenson early on gave a speech on the "cancer of corruption" and signaled to the institution that, henceforth, political issues like corruption and good governance would be taken seriously. The publication of the 1997 World Development Report, The State in a Changing World, marked an intellectual break with the Washington Consensus focus on economic

policy and state downsizing, and the Bank created a new branch devoted to reform of developing country public sectors. These changes constituted an open admission that politics was a critical component of development, and that the state was not simply an obstacle to growth but often a necessary underpinning for it. Increasingly, donor agencies have seen the promotion of democratic accountability as one tool in the fight against corruption.

This modest degree of convergence should not, however, obscure the continuing degree of compartmentalization that exists in the field of development. While paying lip service to the importance of institutions, most economists and field practitioners still see politics as at best an obstacle to the real work of development, which is improvement in incomes, health, education and the like, and not as an independent objective of development strategy. (Amartya Sen is an important exception to this generalization.) The democracy promotion agencies, for their part, spend relatively little time worrying about economic growth, social policy or public health, which in their view are goods often used by authoritarian regimes to buy off populations and prevent democratization.

The intellectual confusion surrounding development has led to severely Balkanized policies both in the United States and in the international community that often work at cross purposes from one another. For example, the authoritarian or semi-authoritarian regimes of Meles Zenawi in Ethiopia, Paul Kagame in Rwanda and Yoweri Museveni in Uganda have been aid darlings over the past decade because of their track records in promoting economic, health and social goals. At the same time, democracy promotion groups have been highly critical of them and have supported opposition groups and civil society organizations seeking accountability and limits on executive power. To be sure, aid agencies don't object to greater government accountability on the part of these regimes, while the

democracy promotion community wouldn't stand in the way of progress on HIV/AIDS or malaria. Yet no one takes a larger view and asks, for example, whether existing aid programs are helping to keep the regime in power or, conversely, are destabilizing it.

Egypt itself presents a good case of this particular form of policy incoherence. Despite the fact that Egypt ranks as one of the top American aid recipients, it is hard to say that Washington was pursuing development goals of any sort there. The United States was primarily interested in stability. Despite brave speeches on democracy by both Condeleezza Rice and Barack Obama in Cairo, the United States actually pulled its punches in pushing serious democratic reform on Egypt, particularly after the Hamas electoral victory in Gaza in 2006. Nonetheless, U.S. economic aid programs were still pushing education and economic policy reform programs in the country. Had American aid administrators taken the Huntingtonian view that their assistance was covertly designed to promote an expectations gap and delegitimate Hosni Mubarak, this might have been a clever strategy. But no such cleverness existed. Instead, it was simply an example of compartmentalized aid programs doing their thing in ignorance of the interdependent effects of politics and economics.

What Is to Be Done?

Ideas precede action. Before we can hope to generate a coherent set of policies for Egypt, or anywhere else for that matter, we need a better understanding of development—that is, how changes in economy, politics and society over time constitute a set of discrete yet interlinked processes. Whatever the shortcomings of classic modernization theory, it at least began from the insight that the phenomenon under study required development of a master social science that transcended existing disciplinary boundaries. This objective is as far away as ever in academia, where the traditional

disciplines keep a chokehold on how younger academics think and do research. Today, the single most popular form of development dissertation in both economics and political science is a randomized micro-experiment in which the graduate student goes out into the field and studies, at a local level, the impact of some intervention like the introduction of co-payments for malaria mosquito netting or changes in electoral rules on ethnic voting. These studies can be technically well designed, and they certainly have their place in evaluating projects at a micro level. But they do not aggregate upwards into anything that can tell us when a regime crosses the line into illegitimacy, or how economic growth is changing the class structure of a society. We are not, in other words, producing new Samuel Huntingtons, with the latter's simultaneous breadth and depth of knowledge.

On a policy level, we need far more mutual understanding between those who promote socioeconomic development and those who work on democracy promotion and governance. Traditional development agencies like USAID already think politically to the extent that their aid projects are designed to support U.S. foreign policy. But they, like their counterparts in multilateral organizations like the World Bank, are not trained to do political economy analysis; they do not seek an understanding of the political context within which aid is used and abused, and what is not sought is very rarely found. We call for the liberalization of ports in Haiti, for example, without trying to understand which particular politicians are benefiting from existing arrangements that keep them closed. For their part, democracy promoters focus on democratic transitions, providing help to opposition parties and civil society organizations in authoritarian countries. But once a transition occurs, as it did after the Orange and Rose revolutions in Ukraine and Georgia, they have relatively little to offer new democratic governments in terms of policy agendas, anti-

corruption strategies or help in improving the delivery of services that citizens want.

Beyond these relatively minor adjustments, a more robust theory of social change might tell us that, in certain circumstances, the best way to destabilize an authoritarian society would be not the funding of civil society groups seeking short-term regime change, but rather the promotion of rapid economic growth and the expansion of educational access.5 Conversely, there are many societies we know will simply waste development assistance dollars because they are ruled by unaccountable authoritarian regimes. In such circumstances, it might be a more efficient use of aid resources to cut development aid entirely and to work only for political change. This is, in effect, what has happened to Zimbabwe under Robert Mugabe, but the country had to sink very far before anyone considered pulling the aid plug.

Huntington got a number of things wrong. The authoritarian transition was not a universally applicable formula for development. It worked reasonably well in East Asia, where there were a number of figures like Lee Kwan Yew, Park Chung-hee or the Chinese Communist Party leadership, who used their autocratic powers to promote rapid development and social change. Arab authoritarians were cut from a different cloth, content to preside over economically stagnant societies. The result was not a coherent development strategy but a wasted generation.

The aspiration of social science to replicate the predictability and formality of certain natural sciences is, in the end, a hopeless endeavor. Human societies, as Friedrich Hayek, Karl Popper and others understood, are far too complex to model at an aggregate level. Contemporary macroeconomics, despite dealing with social phenomena that are inherently quantified, is today in crisis due to its utter failure to anticipate the recent financial crisis.

The part of social change that is the hardest to understand in a positivistic way is the moral dimension—that is, the ideas that people carry around in their heads regarding legitimacy, justice, dignity and community. The current Arab uprising was triggered by the self-immolation of an overeducated 26-year-old Tunisian vegetable seller whose cart was repeatedly confiscated by the authorities. After Mohamed Bouazizi was slapped by a policewoman when he tried to complain, he reached the end of his tether. Bouazizi's public suicide turned into a social movement because contemporary communications technologies facilitated the growth of a new social space where middle-class people could recognize and organize around their common interests. We will probably never understand, even in retrospect, why the dry tinder of outraged dignity suddenly ignited in this fashion in December 2010 as opposed to 2009, or ten years before that, and why the conflagration spread to some Arab countries but not to others. But we can certainly do a better job in putting together the few pieces we do understand, in a way that would be useful to policymakers coping with the reality of social change.

1Huntington, Political Order in Changing Societies: With a New Forward by Francis Fukuyama (Yale University Press, 2006).

2Davies, "Towards a Theory of Revolution", American Sociological Review, Vol. 27 (1962).

3Zakaria, The Future of Freedom: Illiberal Democracy at Home and Abroad (W. W. Norton, 2003); see also Zakaria, "A Conversation with Lee Kuan Yew", Foreign Affairs (March/April 1994).

4For a description of the Wolfenson presidency, see Sebastian Mallaby, The World's Banker: A Story of Failed States, Financial Crises, and the Wealth and Poverty of Nations (Penguin Press, 2004).

5See Harold James's retroview, entitled "Growing Pains", of a classic December 1963 essay by Mancur Olson ("Rapid Growth as a Destabilizing Force") in The American Interest (September/October 2006).

Article 4.

NYT

The Budget Debate, Revealed

Richard W. Stevenson

April 16, 2011 — The air in the capital these days is thick with references to trillion-dollar deficits, debt-to-G.D.P. ratios and mandatory spending. But the budget debate that became fully engaged last week is about far more than accounting and arcane policy disputes. What is under way now is the most fundamental reassessment of the size and role of government — of the balance between personal responsibility and private markets on the one hand and public responsibility and social welfare on the other — at least since Ronald Reagan and perhaps since F.D.R.

The battle ahead "is the big one, and goes to the very major questions about the role of government," said G. William Hoagland, a former Republican staff director of the Senate Budget Committee. "This is going to be a very fundamental clash of ideologies."

The Democratic and Republican Parties have their own internal tensions to address as the debate goes forward in Congress and on the presidential campaign trail. But in its early stages at least, it is liberals who are on the defensive.

The aging of the baby boom generation and the costs of maintaining Medicare and Social Security have put the two pillars of the social welfare system on the table for re-examination. The growing weight of the national debt has given urgency to the question of whether the government has become too big and expensive.

The tepid nature of the current economic recovery, following big stimulus packages, has provided an opening to challenge the effectiveness of Keynesianism as the default policy option for government. And the revived energy of grass-roots conservatives has

given electoral clout to the movement's intellectual and constitutional arguments.

Arthur Brooks, president of the American Enterprise Institute, the conservative research organization, said, "The optimistic view is that we have a confluence of the business cycle, of the demography and of the politics that makes it not just possible to achieve real change, but impossible that we not deal with these things if we want this country to continue on the path envisioned by the founders." So just two and a half years after a presidential election that was in part a repudiation of conservative governance, and with the nation still smarting from the aftereffects of a financial crisis that grew out of failures of markets and regulation, President Obama finds himself in a somewhat surprising position: forced to articulate and sell a vision of how liberalism and the institutions it built in the 20th century can be updated for the constraints of the 21st.

The speech he delivered Wednesday at George Washington University in Washington was his most ambitious effort so far to do so. In it, he harnessed the language of both left and right to argue against the extremes on both sides while suggesting that many of their core principles were not mutually exclusive — in other words, that Great Society values can endure in a Tea Party moment.

He defined "patriotism" as a shared sense of responsibility for the vulnerable and less fortunate. Basic standards of security for the elderly and poor and government investment in a more prosperous future, he said, can not only coexist with a tradition of "rugged individualists with a healthy skepticism of too much government," but are also a vital part of what makes America exceptional.

"We are a better country because of these commitments," he said. "I'll go further — we would not be a great country without those commitments."

Republicans in Congress, he suggested, would shred that tradition under cover of a debate that is only nominally about the budget. “The fact is,” he said, “their vision is less about reducing the deficit than it is about changing the basic social compact in America.”

Conservatives would and did object to his implication of heartlessness, but not necessarily to his assessment of their ambition.

The Republican plan put forward by Representative Paul Ryan of Wisconsin, the chairman of the Budget Committee, and adopted by the House on Friday as its policy blueprint for the next decade contains a substantial dose of deficit reduction but is really a manifesto for limited government.

It would take big steps toward privatizing Medicare, slash upper-income tax rates, repeal last year’s health care law, bite deeply into nearly all federal programs and try to cap the size of government relative to the economy. But it also imposes a self-consciously moral judgment on the government’s role, suggesting that the same kind of demand for added personal responsibility that was embedded in the 1996 overhaul of welfare should now be applied more broadly, to food stamps, housing aid and health care for the elderly and the poor.

“The safety net should never become a hammock, lulling able-bodied citizens into lives of complacency and dependency,” Mr. Ryan’s budget proposal says.

William A. Galston, who was a domestic policy aide to President Bill Clinton and is now a scholar at the Brookings Institution, said Mr. Ryan deserved credit of a sort for addressing head-on the implications of the Republican Party’s increasingly rigid antitax posture, which since it took root in the late 1970s has put greater and greater pressure on budgets and the social programs they support.

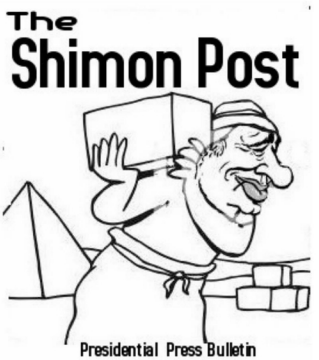
“It represents the first serious effort to begin to bring Republican social policy commitments in line with their fiscal and tax commitments,” Mr. Galston said.

But he said Democrats, too, faced a credibility test. “They have held fast to the security programs in place since the 1930s, but without being able to successfully challenge the antitax orthodoxy,” he said. “The problem the Democrats have is that they can no longer say with a straight face that raising taxes on the wealthy is going to enable them to pay over the next generation for the programs they cherish. So what do you do?”

That question is being asked quietly within both parties, each of which faces its own internal tensions about how to proceed.

There are Republicans who fear that voting for the Ryan plan will put them out of step with their constituents. There are Democrats who think the tax-and-spend label is all too accurate. There are Republicans who might countenance voting for tax increases, and there are Democrats who are willing to meaningfully scale back the benefits promised by Social Security, Medicare and Medicaid.

In the Senate, a group of Democrats and Republicans operating independently of party leaders is trying to come up with a plan that neither party would like but both would accept as necessary. But they are debating basic values; it would no doubt be much easier if the argument was just about numbers.



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Article 1.

The Financial Times

Iran will not hinder plans for a nuclear-free world

Tom Donilon

April 17 2011 -- Two years ago this month in Prague, President Barack Obama proposed steps to advance the goal of "a world without nuclear weapons". In the 24 months since, we have laid the foundation for these next steps in arms control. But now new action is needed.

The record so far is strong. The new Start treaty with Russia will see the lowest level of deployed nuclear weapons since the 1950s. The UN Security Council has imposed unprecedented sanctions on Iran and North Korea for failing to meet their obligations. And enough nuclear materials for hundreds of weapons have been removed, secured or eliminated around the world.

Now, to end illegal nuclear programmes and stop proliferation, we will maintain pressure on both Iran and North Korea. Iran, in particular, is trying to exploit the changes sweeping across the Middle East. But the hypocrisy of claiming to support reform in other countries while suppressing it at home is obvious for all the world to see. Some believe that the changes in the region will increase Iran's influence. In fact the opposite will happen: in a Middle East where more citizens determine their own destiny, Iran will be increasingly isolated by its actions.

Elsewhere, we will work to secure the world's vulnerable nuclear materials within four years, and use a new international fuel bank to ensure that the use of nuclear energy does not lead to proliferation. We will also seek to bring the Comprehensive Test Ban treaty into

force, while pursuing a further treaty to ban the production of fissile material for nuclear weapons.

Significant political hurdles must be overcome to make progress on these last two aims. In the case of the CTBT, we must build support in the US Senate by showing that the treaty will advance American interests, especially by limiting the current nuclear build-up in Asia. Meanwhile if a deal to proceed with negotiations for the Fissile Material Cutoff treaty proves illusive, we will move to create a new forum of like-minded states to move forward.

As we implement the new Start treaty, the next round of nuclear weapons reductions must also begin. A review, under President Obama's direction, will develop options for new reductions in the US stockpile. Once complete, this will shape our approach to a new agreement with Russia. Past agreements have only dealt with some categories of nuclear weapons, but we believe the next round must be as wide as possible, including both non-deployed and tactical nuclear weapons.

We must address the issue of Russia's tactical nuclear weapons, which have never been subject to numerical limits. To do this we seek to reduce the role and number of US tactical nuclear weapons, as Russia takes reciprocal measures to reduce its own tactical forces, and also to relocate these away from Nato's borders. We would also like increased transparency concerning the numbers, locations and types of these tactical forces in Europe.

These new reductions will not be easy. While protecting national security information both sides will need to be able to monitor nuclear weapons in storage and weapons awaiting destruction. This means more demanding verification, to confirm that any future agreements will actually be implemented – and we plan to begin discussions on this with Russia in the near future.

Finally, the US remains committed to an effective missile defence system to defend against emerging missile threats, such as from Iran and North Korea. In Europe our approach was embraced by Nato at the Lisbon summit, and it paves the way for missile defence co-operation between Russia and the US, enhancing the security of both nations, and Europe.

Standing in Prague two years ago, President Obama said some believe "we are destined to live in a world where more nations and more people possess the ultimate tools of destruction". But he also warned that "such fatalism is a deadly adversary". Two years on, it is clear that, when the international community works together to meet a shared threat, progress is possible. We remain confident that if this momentum is sustained, a world where fewer nations possess these ultimate tools of destruction is within our grasp.

The writer is national security adviser to President Barack Obama.

Article 2.

World Affairs

Yes, Nukes: The Global Zero Utopia

Richard Perle

March/April 2011 -- There are many specters haunting our world, but one is of our own making—the utopian vision of a world free of nuclear weapons, the dream that has come to be called "global zero." The vision of the total elimination of nuclear weapons is a postmodern version of an old idea, popular early in the twentieth century, when Norman Angell's The Great Illusion (reprinted in 1933) was required reading in intellectual and policy circles in the United States and Europe. Seventy-six years before Barack Obama was honored in Oslo, Norman Angell also won the Nobel Prize, having come to prominence with the argument that global economic interdependence rendered war futile and unprofitable and therefore obsolete.

In the wake of the Bush administration, what lies in store for the future of America's presence abroad?

Angell's theory expressed the war-weary and wishful temper of the time. Enthusiasm for achieving peace through international institutions and legal constructs ran high in the period after the disastrous First World War, its most fulsome expression being the Kellogg-Briand Pact, named for its authors, an American secretary of state and a French foreign minister. Ratified by parliaments around the world (and by the US Senate on an 85–1 vote, with only Wisconsin Republican John J. Blaine voting against), the pact sought to deal with the problem of international aggression by simply outlawing war. Less than two years after the pact entered into force in 1929, one of the signatories, Japan, invaded Manchuria. The world "community"—that is, the rest of the treaty parties—did nothing.

Other signatories followed suit: Italy invaded Abyssinia in 1935 and Germany launched World War II with the invasion of Poland in 1939.

The great powers that signed the Kellogg-Briand Pact understood its utopian character, but they affirmed it anyway. As with any public endorsement that embraces virtue and rejects vice, the pact appeared to offer little to lose. What did it matter if there was no reasonable assumption that all parties would act in good faith, and no mechanism for enforcement? What harm could come from a lofty ideal formalized with fanfare and champagne in Paris? Realists among its supporters argued that even if prohibiting war couldn't actually end aggression, it would at least bolster the principle that disputes should be resolved peacefully. Outlawing war made good people feel better; how could that be bad?

But, looking back, we can see that the illusion created by Kellogg-Briand, that war had been outlawed, together with widespread but unjustified faith in the League of Nations, was part of the negligence that allowed Hitler to build his strength and seize vast territories from his neighbors without serious opposition. The Kellogg-Briand frame of mind contributed to the responsibility-evading defense and foreign policies of Britain, France, and others in the 1930s, countries that might have stopped Adolf Hitler in his tracks if they had not been so wishful and unrealistic. Far from making the world safer, proclaiming the "norm" of nonaggression had lulled the great powers into a lethal vulnerability. The lesson here is that nations, by indulging utopianism, do not necessarily make the world more idealistic. In fact, they may help bring about the very evils they are trying to eliminate.

Asserting that the world should forsake nuclear weapons sounds—and is—a lot like declaring that war should be illegal. And the arguments for adopting the goal of "global zero" are no more

convincing now than the arguments in support of the Kellogg-Briand pact eighty-two years ago or those advanced at the General Disarmament Conference in Geneva that followed in 1932. When the discussions in Geneva bogged down after a year of talk, President Roosevelt insisted that "if all nations would agree to eliminate entirely from possession and use the weapons which make possible a successful attack, defenses automatically would become impregnable and the frontiers and independence of every nation would become secure." Therefore, he said, the ultimate objective of the conference must be "complete elimination of all offensive weapons."

So what is today's argument for the complete elimination of all nuclear weapons, a goal President Obama embraced to wild applause in Prague in 2009? The statement that launched "global zero" appeared in the Wall Street Journal on January 4, 2007, under the title "A World Free of Nuclear Weapons." Signed by George Shultz, Henry Kissinger, William Perry, Sam Nunn, and others, it was the product of a conference at the Hoover Institution at Stanford University in October of the previous year. It is a tribute to the reputation and high standing of the authors that their statement has been endorsed by many statesmen and policy officials who regard themselves as realists, as well as precipitating a worldwide campaign supporting the concept, if not the details, of a nuclear-free world. [1] The article has been followed by further statements from them and others, as well as movies, media appearances, press conferences, congressional and presidential speeches, international conferences, demonstrations, and the like. "Global zero" organizations have been established on many university campuses in the US and abroad, and tens of millions of dollars have flowed into research institutions and advocacy groups in support of the idea of the total elimination of nuclear weapons. With T-shirts, bumper stickers, and celebrity endorsements, it's a full-blown happening.

In addition to "setting the goal of a world free of nuclear weapons," the 2007 statement argued for a number of practical measures to diminish the likelihood that nuclear weapons would fall into "dangerous hands," or that they would be launched by accident, or that countries interested in, but not now possessing, such weapons would succeed in acquiring them. A number of these measures are doable and desirable, but some are dubious. Altering the posture of nuclear weapons now deployed so that they need not be launched urgently, thereby increasing warning time and diminishing the danger of an accidental or unauthorized launch, would be a useful thing to do—although there is room for debate about how best to accomplish this. The end of the Cold War should have brought an end to deterrent forces poised for instantaneous launch (which in the extreme case could mean launching missiles on the strength of radar warnings) but, unfortunately and dangerously, old habits die hard. Reducing or eliminating the number of short-range nuclear weapons that are designed to be forward deployed would also be useful, since these are the small, highly mobile weapons that could fall into the wrong hands far more readily than large, central strategic systems that are carefully controlled. Most of the short-range weapons deployed today are Russian, however, and the Russians have resisted American proposals to adopt limits on their number. (Given Russia's strong interest in limiting strategic weapons, it is difficult to understand why the Obama administration did not insist on some limits on short-range nuclear weapons as a condition for the New START Treaty. Unused leverage is a squandered opportunity.)

"Providing the highest possible standards of security for all stocks of weapons, weapons-useable plutonium and highly enriched uranium everywhere in the world," another of the 2007 statement's recommendations, is an obvious thing to do. But there is an

unacknowledged conflict between this goal and another of the authors' recommendations—ratification of the Comprehensive Test Ban Treaty. That treaty could lock us in to weapons designs that are less safe and secure than others that might one day be developed, but whose development might necessitate testing. (The current administration's ideological opposition to any innovation in the design of our increasingly obsolete weapons—with the result that we are not, for example, introducing technology to make them unusable, should they fall into unauthorized hands—is overly rigid and shortsighted. It is too bad that the authors of the statement didn't make this point.)

Shultz, Kissinger, et al. correctly urge that international measures be taken to place control of the nuclear fuel cycle in safe hands. But accomplishing this task is complicated by the legacy of the "Atoms for Peace" concept dating back to the Eisenhower administration and enshrined in the Nuclear Non-Proliferation Treaty (NPT). Rich in unintended consequences, Atoms for Peace promised that nations pledging (i.e., merely pledging) not to acquire nuclear weapons would be eligible to receive assistance with their civilian nuclear programs from the advanced nuclear powers. The problem is that the infrastructure supporting civilian nuclear power gets you well down the road to nuclear weapons. In fact, from its inception, Atoms for Peace has spread nuclear technology around the world. India's nuclear program, for example, grew from its cooperation with Canada, which supplied the reactor that enabled India's bomb.

The NPT has become the poster child for opposition to the spread of nuclear weapons. Yet, ironically, faith in its capacity actually to restrain the proliferation of nuclear weapons is at least misplaced—and possibly much worse. For one thing, the belief that the NPT is robust enough, and its institutions effective enough, can easily become an excuse for individual nations to do no more than the treaty

process requires—and that, in turn, depends on a consensus at the UN. For another, the NPT incorporates the utopian vision of global zero and even sails beyond it, calling for "general and complete disarmament that liquidates, in particular, nuclear weapons." Since almost no governments anywhere in the world actually believe in "general and complete disarmament," the effect of its inclusion in the NPT simply robs that treaty of any gravity.

It is widely accepted among those who think the Non-Proliferation Treaty is the key to containing the spread of nuclear weapons that control of the international fuel cycle must be achieved by an international consensus and administered and enforced by the UN or comparable body. But suppose a much smaller group of nations—a coalition of the willing, perhaps—sought to control the nuclear fuel cycle, or at least deal with would-be proliferators in a firm, timely and decisive manner: Could such a coalition achieve legitimacy in light of the universalist conceit of the NPT? Would it even contemplate action outside the treaty?

But what made the 2007 Wall Street Journal article so important was not its prescription for obviously necessary measures such as ensuring controls for nuclear fuel. It was that its appearance reinforced a growing utopianism that has flowered into a movement for "a world free of nuclear weapons," a movement whose momentum is reminiscent of the 1980s movement for a "nuclear freeze"—a Soviet-manipulated protest aimed at halting Ronald Reagan's modernization of the American nuclear deterrent. Shultz, Kissinger, Perry, and Nunn should have foreseen that their statement would be seized upon by irresponsible actors. All four, after all, opposed the nuclear freeze movement of the 1980s.

The goal of a nuclear-free world was made even more emphatic in a second article, also in the Wall Street Journal, that the authors wrote a year after the first one (January 15, 2008): "Progress must be

facilitated," they said, "by a clear statement of our ultimate goal. Indeed, this is the only way to build the kind of international trust and broad cooperation that will be required to effectively address today's threats. Without the vision of moving toward zero, we will not find the essential cooperation required to stop our downward spiral."

The "downward spiral" has little to do with the nuclear strategic relationship between the United States and Russia, although the authors have, in both statements, called for ratification of the New START Treaty. In fact, that relationship has declined in importance to the point where it makes little difference whether the Russians have more nuclear weapons or fewer than they have now. The calculations of the consequences of a nuclear exchange between the United States and Russia, a proper obsession during the Cold War, are no longer relevant and, despite President Obama's overblown claims, the New START Treaty is of no substantial benefit.

What the "downward spiral" refers to is the world's descent into the dangerous disorder of a fast-growing number of nuclear-armed states—North Korea already, with Iran and others to follow. It is the bloody prospect of nuclear weapons in the hands of irresponsible regimes, or even terrorists, that has galvanized Shultz, Kissinger, Perry, and Nunn, and which urges the development of a post–Cold War nuclear weapons strategy.

In other words, the utopian vision of a world without nuclear weapons is driven principally by the fear of nuclear proliferation. The fear of many more nuclear weapon states is the key matter of concern for serious people, not cutting or fine-balancing—Cold War style—the US and Russian nuclear arsenals. The case for global zero hinges on whether embracing that goal contributes to halting the proliferation of nuclear weapons.

I worry that the commitment to global zero, and the actions of

existing nuclear states to advance toward that goal, will do more to spread than contain nuclear weapons—directly, by encouraging some current non-nuclear states to consider developing nuclear weapons, and indirectly, by displacing and undermining other more effective strategies. At the heart of the case for global zero is an argument—that reductions (on the way to zero) in our nuclear force will lead others to reduce theirs or curtail or abandon plans to acquire them altogether—that ignores history, logic, and politics.

One important reason why most friends and allies of the United States (Britain and France being the exceptions) have not sought nuclear weapons of their own has been our readiness to extend the protection of our nuclear deterrent to cover them. Germany, Japan, and South Korea, all quite capable of building nuclear weapons, went through even the precarious periods of the Cold War confident that our nuclear force made it unnecessary for them to have nuclear forces of their own. Where the United States was unwilling or unable to offer protection to countries that believed themselves threatened—India and Pakistan, for example—those countries did build independent nuclear capabilities. If the United States is seen to be heading toward eliminating its nuclear capabilities, countries that have relied on us may decide that they must acquire their own nuclear weapons. This is especially true in a region where another state, like Iran, is pursuing nuclear weapons and is likely to obtain them, thus alarming and frightening its neighbors into an arms race they would rather avoid. The sad history of the nuclearization of the Indian subcontinent, for instance, appears to have begun with India responding to China's nuclearization, followed by Pakistan responding to India's. If the United States is seen to be on a path to relinquishing nuclear weapons, is it reasonable to expect the Japanese and the South Koreans, long sheltered by our deterrent, to remain indifferent to the nuclear forces of China and North Korea?

Far more worrying, however, than the effect on friends and allies of the utopian excursion toward global zero is the effect of such thinking on such dangerous adversaries as Iran and North Korea. Is there any reason to believe that our embrace of that goal will discourage them from the vigorous pursuit of nuclear weapons? What could be more encouraging to Iran than the idea that they will be getting into the nuclear business just as we are getting out? Imagine Iran's supreme council meeting to discuss whether to continue the costly pursuit of nuclear weapons. "But what is the point of building these weapons?" asks a skeptical mullah. "We will have one or two and the Americans have thousands." Another replies: "Yes, but the Americans have declared their intention to eliminate nuclear weapons entirely. They say they have already started down that road. Shultz, Kissinger, Perry, Nunn, and even Obama himself are committed. Obama said: 'We have to insist, yes, we can.' Did you see them cheering in Prague? And when they have started getting rid of theirs, our small arsenal will not seem so puny."

Of course, proponents of global zero will say that we would never give up our last nuclear weapons if the Iranians (by that point having long ago acquired and stockpiled them) did not do the same. This argument comes close to saying the goal of global zero is a mere mirage, which leaves one wondering what benefits can be claimed for chasing it or pretending to believe it is real. International politics is played out in near real time, and the influence of future events, like future earnings, is deeply discounted by prudent officials. But one important point remains: as our nuclear capabilities dwindle, the value of even a few nuclear weapons rises (toward the end of these parallel processes, exponentially). This puts a burden on trust and verification that they simply cannot bear. I was once told by the prime minister of an important country in Europe that it was all but impossible to imagine the day when their last nuclear weapon would

be handed over to some future international body, or destroyed. "I would certainly cheat," the prime minister said. "And so would all the others." I was in no way surprised by this admission.

I agree that the problem of nuclear proliferation is real. Dealing with it is an urgent and enormously important duty of the US government. But it is a mistake to define the problem in such a way as to suggest that any spread of nuclear weapons is dangerous or that nuclear weapons in Iranian hands should be regarded as the same as nuclear weapons in the hands of, say, Japan or Australia—or, for that matter, that the weapons themselves are the problem. Yet the proponents of global zero tend to deplore all nuclear weapons equally, no matter who holds them, and to regard any diminution of their number as a positive step because only subtraction leads to zero. But would a reduction in the number of North Korean weapons together with an increase in, say, those held by the French, yielding a net increase in the number of weapons, be a bad thing? The problem is not the weapons but the character of the regimes that possess them.

In many ways such a principle simplifies the proliferation problem and makes it less daunting. Focus on the miscreants, on the few countries seeking nuclear weapons whose possession of them would be dangerous or destabilizing or both. Sanction them. Isolate them. Undermine their regimes. Pressure them mercilessly. Do whatever it takes. But don't offer to aid their "peaceful" nuclear programs in exchange for promises about weaponization that are so easily broken. And don't let them get away with the insulting notion that until we ourselves disarm we have no right to demand that they halt their clandestine programs—as if the US nuclear arsenal poses the same danger to international peace and security as do the nuclear arsenals of the regimes of Kim Jong-il or the Iranian clerics.

The goal of zero nuclear weapons, often referred to by its sponsors as a "moral imperative," inevitably delegitimizes and undermines

support for those who have actually helped to keep the peace and have the potential to go on doing so. The opprobrium attached to ignoring or dismissing the goal of global zero has no influence on the Irans and North Koreas, but it does have an influence on us. It makes it easy, for example, for reflexively anti-nuclear voices in the Congress and the Obama administration (some have migrated from the former to the latter) to oppose even modest updating of our nuclear weapons and to make technical improvements taboo. Thoughtful proponents of global zero should admit that this is dangerous nonsense. They should, at a minimum, campaign with equal vigor for the modernization of our existing, shrinking nuclear arsenal.

Unfortunately, fixing on zero as the urgent issue before us obscures the real challenge: keeping nuclear weapons out of the hands of countries or organizations that might use them offensively. Seen from this viewpoint, the two most decisive acts against the proliferation of nuclear weapons were the Israeli attacks on Iraq's weapons program in 1981 and Syria's in 2008. The 1981 attack was widely, if hypocritically, condemned. The destruction of the Syrian facility was downplayed on all sides; and while the US had opposed it, it had the good sense to keep quiet after the fact.

There is much that we can do to slow the proliferation of nuclear weapons. Tougher sanctions against the Iranian regime, especially if they produced nationwide shortages of fuel for automobiles and made it more difficult to obtain outside technology, money, and expertise, would be a good place to start. How about sanctions to be applied to any individual who assists nuclear proliferators? Or serious sanctions against companies—and their executives—who provide material support? The more effective they became, the louder the message to others who might be tempted to seek weapons of their own. Why did the "international community," which passes endless motions against

nuclear weapons, fail to follow up the destruction of the Syrian-North Korean clandestine weapons program with tough, punitive sanctions against Syria and North Korea? Their having been caught in flagrante delicto should trigger consequences beyond just the destruction of the clandestine facility.

Supporters of global zero sometimes argue that because we support it, other countries will be readier to help us confront Iran and North Korea. The idea seems to be that our support for eliminating all nuclear weapons makes it easier for, say, our European and Pacific allies to align themselves with robust anti-proliferation policies. The argument would be interesting if there were evidence to support it—but there is none. And there has been all too little backing for robust anti-proliferation policies anyway. There has been no observable difference in the readiness of other countries to pressure Iran or North Korea since Obama, who supports global zero, became president, compared to the help we got when George W. Bush, who did not support global zero, was in office.

Tough, effective measures to slow the spread of nuclear weapons are required—not utopian, solipsistic notions about how American disarmament is the key to world peace. It isn't. And the sooner we reject measures that won't work, the sooner we may find ones that do.

Richard Perle is a resident fellow at the American Enterprise Institute. He served as assistant secretary of defense for international security policy from 1981 to 1987 and afterward as a member of the Defense Policy Board, including three years as chairman.

[1] I believe the high regard in which Shultz, Kissinger, Perry, and Nunn are held is well deserved. In their long and extraordinary careers, they have each made important contributions to American and international security. We are all in their debt.

Article 3.

The Daily Star

Turkey's model may be a slippery slope

Soner Cagaptay

April 18, 2011 -- The so-called "Turkish model," in which an Islamist party heads an ostensible democracy, has been touted in recent weeks as the likely outcome in post-authoritarian Arab countries.

Likely, maybe, but Turkey's experience under the ruling Justice and Development Party, or AKP, suggests that such a path may also be a slippery slope.

The AKP does not aim to create a fundamentalist state in Turkey, but the ruling party's conservative policies might inadvertently lead to precisely that. For several years the AKP has been transforming Turkish society by making religion the moral compass of the country's body politic. This does not mean that the party wants to turn Turkey into a theocracy. But once narrowly defined faith becomes a guiding principle in formulating policy, fundamentalists claiming ideological purity become more competitive politically. Their demands for an even stricter implementation of religion-based rules and values risk pushing Turkish society toward radicalization.

History teaches us that fundamentalists always defeat conservatives in any competition for ideological purity. In the 11th century, the religiously conservative Almoravid movement swept the Muslim kingdom of Andalusia in reaction to its liberal ways, especially its embrace of progressive thought and acceptance of non-Muslims. Upon taking over Andalusia, the Almoravids enshrined their illiberal interpretation of Islam as the moral compass of society.

But the Almoravids' brand of conservatism was soon viewed as too lax by Muslims who were even more fundamentalist. The Almohads

emerged to protest what they considered the Almoravids' "tolerance." Their takeover of Andalusia radicalized the society, leading to the persecution of non-Muslims and to religious warfare.

Turkey's Islamization under the AKP threatens to follow a similar, if more gradual, trajectory. The AKP's embrace of religious values is not the biggest problem of Turkish secularists. Rather, the larger threat is that, now that the AKP has pushed religion more to the center of Turkish social preoccupations, fundamentalists will gain carte blanche to challenge the AKP as "not Muslim enough."

Indeed, last November the AKP was moved to fire Ali Bardakoglu, the liberal head of Diyanet, Turkey's official religious authority that has historically checked fanaticism by building mosques and training imams while promoting a liberal understanding of Islam. The AKP replaced Bardakoglu with another well-known scholar, Mehmet Gormez, who has an avowedly more conservative take on Islam.

The new Diyanet chief's first act was to fire Ayse Sucu, who headed the organization's women's branch. Sucu's initiatives had included suggesting that women should be able to decide for themselves whether to cover their hair. Fundamentalist media and pundits were ecstatic at her ousting, claiming that it signaled that there was no room for a personal interpretation of Islam.

The AKP has promoted socially conservative values, such as the need for women to wear the Islamic headscarf and a disdain for alcohol. Turkish bureaucrats and businesspeople complain that embracing these practices to prove that one is a "good Muslim" has become a precondition for getting government promotions and contracts. Meanwhile, the AKP-run media watchdog recently scolded a television station for broadcasting a program about Suleiman the Magnificent that truthfully depicted the famously cosmopolitan Ottoman sultan drinking alcohol. The official warning followed an outcry led by AKP leaders and fundamentalists alike, who demanded

that the show be banned. Radicals now have the upper hand in slowly ending Turkey's centuries-old drinking culture.

Or take the AKP's new Kurdish policy. In an effort to expand its base among Kurds before parliamentary elections next June, the party has emphasized Islam as a common denominator between Kurds and Turks, in order to undermine the secular Kurdish nationalist party. The plan may well help the AKP win the elections. However, it will also invite competition from religious radicals, such as the Kurdish Hezbollah – a violent Sunni group not linked to the Lebanese Shiite group of the same name. Kurdish Hezbollah boasts a wide grassroots network in southeast Turkey.

Recently, Kurdish Hezbollah's leadership, which had been imprisoned since a crackdown in the late 1990s, was released due to a legal loophole. The AKP's emphasis on Islam may mean it helps replace the secular-nationalist Kurdish movement with a religious-nationalist one. Don't be surprised if Kurdish Hezbollah begins suggesting that neither the AKP nor Diyanet are "Muslim enough" to represent Kurds.

Turkey's shift is bad news for the United States and Europe. The potential radicalization of the Turkish population is a pressing concern, given that Turkey recently eliminated visa restrictions for citizens of a number of Muslim countries – including Iran, Syria, Jordan and Libya. The move will facilitate cross-fertilization among radical groups in Turkey. Washington should start making contingency plans now to deal with radicals who will challenge the AKP's cooperation with the United States, particularly in Afghanistan.

Turkey's emboldened radicals will also take issue with Ankara's European Union policy – as if Turkey's EU accession plans did not already face enough obstacles. Given the large number of Turkish

immigrants in Europe, the radicalization of the Turkish population, especially its Kurdish segment, will likely replicate itself in Europe. The AKP's religious bent, disconcerting in itself, can easily spin out of control. The lesson of the AKP experience for the Arab world, particularly give that Muslim Brotherhood-led governments may take over in the region, is that religious orthodoxy is an ideological beauty contest in which the winner is always the ugly guy.

Soner Cagaptay is director of the Turkish Research Program at the Washington Institute for Near East Policy, where he is also a senior fellow.

Article 4.

NYT

Al Qaeda Stirs Again

Juan C. Zarate

April 17, 2011 -- MANY in the West had taken comfort in Al Qaeda's silence in the wake of the uprisings in the Muslim world this year, as secular, nonviolent protests, led by educated youth focused on redressing longstanding local grievances, showcased democracy's promise and seemed to leave Al Qaeda behind.

Indeed, the pristine spirit of the Arab Spring does represent an existential threat to Al Qaeda's extremist ideology. But Al Qaeda's leaders also know that this is a strategic moment. They are banking on the disillusionment that inevitably follows revolutions to reassert their prominence in the region. And now Al Qaeda is silent no more — and is taking the rhetorical offensive.

In recent statements, Ayman al-Zawahri, Osama bin Laden's second-in-command, and Qaeda surrogates have aligned themselves with the protesters in Libya, Egypt and elsewhere, while painting the West as an enemy of the Arab people.

In North Africa, Al Qaeda in the Islamic Maghreb claimed that while protesters flooded the streets of Tunis and Cairo, it had been fighting in the mountains against the same enemies. Anwar al-Awlaki, a Yemeni-American cleric affiliated with Al Qaeda in the Arabian Peninsula, declared that in the wake of the revolutions, "our mujahedeen brothers ... will get a chance to breathe again after three decades of suffocation" and that "the great doors of opportunity would open up for the mujahedeen all over the world."

Mr. Zawahri has denounced democracy, arguing that toppling dictators is insufficient and that "justice, freedom, and independence"

can be achieved only through "jihad and resistance until the Islamic regime rises."

The chaos and disappointment that follow revolutions will inevitably provide many opportunities for Al Qaeda to spread its influence. Demographic pressures, economic woes and corruption will continue to bedevil even the best-run governments in the region. Divisions will beset the protest movements, and vestiges of the old regimes may re-emerge.

Al Qaeda and its allies don't need to win the allegiance of every protester to exert their influence; they have a patient view of history. Although Washington must avoid tainting organic movements or being perceived as a central protagonist, the United States and its Western allies should not be shy about working with reformers and democrats to shape the region's trajectory — and ensuring Al Qaeda's irrelevance in the Sunni Arab world, the heart of its supposed constituency.

In countries where autocrats have been toppled (as in Egypt and Tunisia), we must help shape the new political and social environment; in nondemocratic, allied states (like the region's monarchies), we need to accelerate internal reform; and in repressive states (like Iran, Libya and Syria), we should challenge the legitimacy of autocratic regimes and openly assist dissidents and democrats. This is not about military intervention or the imposition of American-style democracy. It is about using American power and influence to support organic reform movements.

The United States Agency for International Development and advocacy organizations can help civil society groups grow; human rights groups can organize and assist networks of dissidents; and Western women's groups and trade unions could support their counterparts throughout the Middle East. Wealthy philanthropists and entrepreneurs who are part of the Middle Eastern diaspora could

make investments and provide economic opportunities for the region's youth, while technology companies interested in new markets could partner with anticorruption groups to aid political mobilization and increase government accountability and transparency. Hollywood and Bollywood writers and producers should lionize the democratic heroes who took to the streets to challenge the orthodoxy of fear.

A focused campaign to shape the course of reform would align our values and interests with the aspirations of the protesters. More important, it would answer the challenge from Al Qaeda to define what happens next and reframe the tired narratives of the past.

In 2005, Mr. Zawahri anticipated this battle for reform and noted that "demonstrations and speaking out in the streets" would not be sufficient to achieve freedom in the Muslim world. If we help the protesters succeed, it will not only serve long-term national security interests but also mark the beginning of the end of Al Qaeda.

Juan C. Zarate, a senior adviser at the Center for Strategic and International Studies, was the deputy national security adviser for combating terrorism from 2005 to 2009.

Article 5.

Wall Street Journal

It's in America's Interest to Stay in Iraq

Max Boot

April 18, 2011 -- Secretary of Defense Bob Gates was in Iraq early this month urging Iraqi leaders to decide whether they want U.S. forces to stay beyond Dec. 31. "If there is to be a presence, to help with some of the areas where [the Iraqis] still need help," he said, "we're open to that possibility. But they have to ask."

This is a small, belated, but welcome step in the right direction. Until now the Obama administration has taken a hands-off attitude in Iraq, giving every indication that it would be fine with a complete pullout of the 50,000 U.S. troops currently in the country. This would presumably allow the president to make good on his 2008 campaign pledge to "end the war"--although U.S. troops aren't engaged in much of a war at the moment.

They are primarily involved in training, assisting and advising Iraqi forces, conducting counterterrorism missions, and serving as a buffer force to reassure all sides in Iraq's fractious politics that their opponents will not resort to force to achieve their ends. The reassurance provided by U.S. forces is important, given that violence continues to be perpetrated by Sunni and Shiite extremist groups, including al Qaeda in Iraq, whose premature obituary has been written more than once.

U.S. forces play a particularly important role as a peacekeeper between the Kurdish peshmerga militia and the Iraqi Security Forces along the ill-defined frontier (the "Green Line") between Iraq proper and the Kurdish Regional Government. On a visit to Iraq last month, I encountered the umpteenth crisis between the Kurds and Arabs. The peshmerga had come down south of the Green Line to surround the

disputed city of Kirkuk. The Iraqi army was moving troops to the area. Shooting could have broken out were it not for the presence of the U.S. army in the middle.

Peshmerga leaders won't talk directly to their Iraqi counterparts--they need a trusted third party in the room. What will happen next year if another such crisis erupts when U.S. troops are gone?

The U.S. Embassy has an ambitious plan to deploy some 1,000 diplomats backed by 16,000 contractors to maintain a presence there and at several consulates around the country. But even if they pull this off--a feat of logistics that would be unprecedented for the State Department--there will be no replacement for the peacekeeping function that is performed by our troops.

Contractors may be successful in training Iraqi forces but I have my doubts about whether they will be up to the magnitude of the task. Iraq has no fighter aircraft and no air-control system. It has only some 70 tanks and no artillery. Its army has almost no experience in combined-arms warfare, having devoted the last eight years, for understandable reasons, to counterinsurgency operations.

In other words, Iraq is almost defenseless. That makes it easy prey for Iran, its historic rival. This doesn't mean that an Iranian invasion is likely. Yet Iranian bullying and influence-peddling is going on all the time, and if Iraq can't defend its borders, Tehran will have an extra element of coercive leverage.

Under these circumstances, leaving Iraq entirely would be an act of folly. We are still in Kosovo, South Korea and other post-conflict zones that are far more stable. We need to be in Iraq too.

We don't need to keep 50,000 troops there, but a continuing presence of 20,000 military personnel, as argued by military analysts Frederick and Kimberly Kagan, would seem to be the minimum necessary to ensure Iraq's continued progress. It would also make possible an Iraqi-American alliance that could become one of the linchpins of security

in this strategically vital region. Having active bases in Iraq would allow us to project power and influence, counter the threat from both Iran and al Qaeda, and possibly even nudge the entire Middle East in a more pro-Western direction.

Before I arrived in Iraq, I had thought there might be behind-the-scenes negotiations going on to extend the Status of Forces Agreement to allow some troops to remain behind. But after spending several days talking with Iraqi and American officials, civilian and military, I came to the conclusion that no talks had started because each side was waiting for the other to go first. Mr. Gates has finally broken through the "After you, Alphonse" syndrome, but his intervention may be too little, too late.

Mr. Boot is a senior fellow in national security studies at the Council on Foreign Relations.

Article 6.

NYT

France Flies, Germany Flops

Roger Cohen

April 16, 2011 -- I've always had a soft spot for Nicolas Sarkozy. He was the guy with the wrong name and the wrong background who took on the smug talkers with names like Dominique de Villepin and vanquished them. He was the outsider from the wrong schools who believed in energy and talent and had the audacity to smash the taboo that said a French politician can't love America and prosper.

Sarkozy was a doer. He thought François Mitterrand's seductive phrase (in French at least) — "Il faut laisser le temps au temps" (You must let time take its course) — was baloney that left you with disasters like the Bosnian genocide. He thought work and reward should be linked, a Gallic heresy, and he worked hard.

He hated the dependency culture of an overdeveloped French state, which entrenched rights and enfeebled responsibility. That he was elected president showed that France, deep in its soul, knew it had to escape the Mitterrand-Chirac rut with its glut of erudition and its glob of inaction. That was heartening.

The sanctimonious attacks on him from the left oozed the paralyzing conservatism that had blinded France to change. The attacks on Sarkozy from a blue-blooded or petit-bourgeois right often betrayed the same quasiracist disdain evident in rightist attacks on President Obama.

Yes, I liked Sarkozy — and still do. Then there was his rudeness; his taste for his rich friends' yachts; his need for adulation that helped reduce a good newspaper, Le Figaro, to a fawning mouthpiece; his authoritarian itch from which gypsies most conspicuously suffered; his petulant impatience, his petty vanities and his peevish jealousies —

what Nicole Bacharan, a social scientist, calls “the one-man soap opera.”

These were more than peccadilloes. But sharp elbows were needed to shift France from sleepwalk mode.

Only in recent weeks has the distance traveled come into focus: France, reintegrated in 2009 into the command structure of NATO, spearheading the United Nations-backed NATO military operation in Libya; providing armed muscle to the U.N. forces in Ivory Coast; and giving its pacifist-trending ally Germany a lesson in 21st-century Atlanticism.

Adenauer and de Gaulle must be turning in their graves. Here was Germany standing wobbly with Brazil, Russia, India and China — and against its closest allies, France and the United States — in the U.N. vote on Libyan military action. And here was France providing America’s most vigorous NATO support.

This was a dramatic inversion of postwar roles. It revealed the drift of a navel-gazing Germany unprepared to lead despite its power and impatient with Adenauer’s Western anchoring. It also demonstrated France’s break under Sarkozy from the posturing Gaullist notion of a French “counterweight” to America. These are seismic European shifts.

In Benghazi, the capital of free Libya, when they see a NATO aircraft they say, “There goes another Sarkozy.” After the French shame of Rwanda, a genocide where Mitterrand let time do its fullest work, that’s something.

Perhaps it’s only now with Sarkozy that another, deeper French shame is passing, one Mitterrand and Chirac knew: the “strange defeat” of 1940 with its paralyzing subsequent obfuscations.

Certainly, a presidential election next year has not been unrelated to Sarkozy’s activism. Nor has a compensatory urge after France took

the wrong side in Tunisia. But the president's instinct to save Benghazi and to oust Ivory Coast's usurper was right.

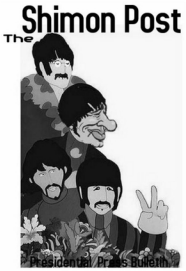
Sarkozy has intuited three things. First, the democratization of the Arab world is the most important European strategic challenge of the decade. Second, it was time "to take the training wheels off," in the words of Constanze Stelzenmüller of the German Marshall Fund, and have Europe rather than an overextended America lead in Libya. Third, the U.N. cannot always be an umbrella that folds when it rains. If its "responsibility to protect" means anything, it must be when an Arab tyrant promises to slaughter his people.

We stand at a high point in French postwar diplomacy and a nadir in German. There were strong arguments on either side of a Libyan intervention, but with a massacre looming in Benghazi, Germany had to stand with its allies. Angela Merkel has proved herself more a maneuverer than a leader. Germany often conveys the sense that it now resents the agents of its postwar rehabilitation — the European Union and NATO.

I don't think Germany believes its future lies with the BRIC countries, as the U.N. Libya vote suggested. I do think Germany has entered a new era of ambivalence and nationalist calculation.

That means several things. European integration is on hold, and as long it's on hold the future of the euro is at risk. The German-French alliance will remain under strain. Obama should look to Sarkozy, not Merkel, for strategic support.

A last thought. This restless French leader is at his best with his back to the wall. He's shown that. The same quality means it would be foolish to count him out next year.



26 May, 2011

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Article 1.

The Washington Post

Where Netanyahu fails himself and Israel

Fareed Zakaria

May 26 -- Conventional wisdom is fast congealing in Washington that President Obama was wrong to demarcate a shift in American policy toward Israel last week. In fact, it was Prime Minister Binyamin Netanyahu who broke with the past — in one of a series of diversions and obstacles Netanyahu has come up with anytime he is pressed. He wins in the short run, but ultimately, he is turning himself into a version of Soviet Foreign Minister Andrei Gromyko, "Mr. Nyet," a man who will be bypassed by history.

Here is what Netanyahu's immediate predecessor, Ehud Olmert, said in a widely reported speech to the Israeli Knesset in 2008: "We must give up Arab neighborhoods in Jerusalem and return to the core of the territory that is the State of Israel prior to 1967, with minor corrections dictated by the reality created since then." Olmert, a man with a reputation as a hard-liner, said that meant Israel would keep about 6 percent of the West Bank — the major settlements — and give up land elsewhere. This was also the position of Ehud Barak, Israel's prime minister during the late 1990s.

The Bush administration did not have a different position, as statements from the president and Condoleezza Rice make clear. Here is George W. Bush in 2008: "I believe that any peace agreement between them will require mutually agreed adjustments to the armistice lines of 1949 to reflect current realities and to ensure that the Palestinian state is viable and contiguous." (The 1949 armistice lines is another way of saying the 1967 borders.)

Or consider this statement from last November: "[T]he United States believes that through good-faith negotiations, the parties can

mutually agree on an outcome which ends the conflict and reconciles the Palestinian goal of an independent and viable state, based on the 1967 lines, with agreed swaps, and the Israeli goal of a Jewish state with secure and recognized borders that reflect subsequent developments and meet Israeli security requirements." That's not Obama, Bush or Rice, but a statement jointly issued by Secretary of State Hillary Clinton and Netanyahu on Nov. 11, 2010.

Today, Netanyahu says that any discussion of the 1967 borders is treason and that new borders must reflect "dramatic changes" since then. So in three years, an Israeli prime minister's position has gone from "minor corrections" to "dramatic changes." Netanyahu's quarrel, it appears, is with himself. Yet we are to think it is Obama who has shifted policy?

Why did Netanyahu turn what was at best a minor difference into a major confrontation? Does it help Israel's security or otherwise strengthen it to stoke tensions with its strongest ally and largest benefactor? Does such behavior further the resolution of Israel's problems? No, but it helps Netanyahu stir support at home and maintain his fragile coalition. And while Bibi might sound like Churchill, he acts like a local ward boss, far more interested in holding onto his post than using it to secure Israel's future.

The newsworthy, and real, shift in U.S. policy was Obama publicly condemning the Palestinian strategy to seek recognition as a state from the U.N. General Assembly in September. He also questioned the accord between Fatah and Hamas. Obama endorsed the idea of a demilitarized Palestinian state, a demand Israel has made in recent years. Instead of thanking Obama for this, Netanyahu created a public confrontation to garner applause at home.

Netanyahu's references to the "indefensible" borders of 1967 reveal him to be mired in a world that has gone away. The chief threat to Israel today is not from a Palestinian army. Israel has the region's

strongest economy and military, complete with an arsenal of nuclear weapons. The chief threats to Israel are from new technologies — rockets, biological weapons — and demography. Its physical existence is less in doubt than its democratic existence as it continues to rule millions of Palestinians in serf-like conditions — entitled to neither a vote nor a country.

The path to resolving the Israeli-Palestinian conflict has been clear for 20 years. Israel would cede most of the land it conquered in the 1967 war to a Palestinian state, keeping the major settlement blocks. In return, it would get a series of measures designed to protect its security. That's why the process is called land for peace. The problem is that Netanyahu has never believed in land for peace. His strategy has been to put up obstacles, create confusion and wait it out. But one day there will be peace, along the lines that people have talked about for 20 years. And Netanyahu will be remembered only as a person before the person who made peace, a comma in history.

Article 2.

NYT

Parties See Obama's Israel Policy as Wedge for 2012

Jackie Calmes and Helene Cooper

May 25, 2011 — Few issues in American politics are as bipartisan as support for Israel. Yet the question of whether President Obama is supportive enough is behind some of the most partisan maneuvering since the Middle East ally was born six decades ago, and that angling has potential ramifications for the 2012 elections.

The visit of Prime Minister Benjamin Netanyahu of Israel in the past week captured just how aggressively Republicans are stoking doubts about Mr. Obama. Republican Congressional leaders and presidential aspirants lavished praise on Mr. Netanyahu as quickly as they had condemned Mr. Obama for proposing that Israel's 1967 borders, with mutually agreed land swaps, should be a basis for negotiating peace with the Palestinians.

Republicans do not suggest that they can soon break the Democratic Party's long hold on the loyalty of Jewish-American voters; Mr. Obama got nearly 8 of 10 such voters in 2008. But what Republicans do see is the potential in 2012 to diminish the millions of dollars, volunteer activism and ultimately the votes that Mr. Obama and his party typically get from American Jews — support that is disproportionate to their numbers.

While Jewish Americans are just 2 percent of the electorate nationally, they are "strategically concentrated," as Mark Mellman, a Democratic pollster, put it, in several swing states that are critical in presidential elections. Those states include Florida — which in 2000

illustrated the potentially decisive power of one state — Ohio and Nevada.

A test of Mr. Obama's support will come June 20, when he will hold a fund-raiser for about 80 Jewish donors at a private dinner.

John R. Bolton, the former United States ambassador to the United Nations and a possible Republican presidential candidate, argues that because of administration proposals, Republicans will be able to make gains not only among American Jews but also among evangelicals who are supportive of Israel on biblical grounds, and other voters.

Mr. Bolton said that he was on a cruise sponsored by the conservative magazine Weekly Standard last week in the Mediterranean, and that most of the people on the ship "reacted very strongly against" Mr. Obama's speech outlining his Mideast vision. "As a Republican," he said, "you can use this to show how radical the president's policies are on a whole range of issues."

The depth of Democrats' worries was evident from the competition to out-applaud Republicans on Tuesday during Mr. Netanyahu's speech to a joint meeting of Congress and from the speed with which Congressional Democrats led by Senator Harry Reid of Nevada, the majority leader, distanced themselves from Mr. Obama on Israel.

"Are there questions in the American-Jewish community? I think the answer is yes," said Mr. Mellman, who is Jewish and has polled the community for Democrats in the past. "Has Obama been branded as not pro-Israel or anti-Israel? Not at all."

"I think he is strongly pro-Israel, in fact," he added. "But that is the political struggle in which the Republicans are engaged, which is to get him branded as not pro-Israel. And to the extent they're successful in that, the likelihood is they would have some meaningful impact on the Jewish vote."

J Street, the left-leaning alternative to the more established American Israel Public Affairs Committee, put out a statement of support for Mr. Obama on Wednesday. “To oppose the president without laying out a credible alternative basis for a two-state solution is to embrace a status quo leading to the eventual loss of Israel as we know and love it,” its statement said.

Mr. Obama’s proposal, the group said, is supported by many Jews in the United States and Israel. It is “the path that most of Israel’s recent prime ministers have attempted to blaze, from Rabin to Barak to Olmert.”

Republicans, however, are confident that their emphasis on unconditional support for Israel holds appeal both for many Jews and for conservative Christians.

Yet it is the Republican Party’s close identification with evangelical Christians in recent years that is perhaps its biggest hurdle to winning over significant numbers of Jewish voters and donors. On issues that are crucial to the conservative Republican base — like opposition to abortion, gay rights, liberalized immigration and much government spending — most American Jews are on the other side, and strongly so.

“If Republicans can mischaracterize this president as anti-Israel, they can distract from the fact that on every other issue their party is in disagreement with the American-Jewish community,” said David A. Harris, president of the National Jewish Democratic Council, a group of Jewish-American Democratic activists.

Mr. Netanyahu on Monday experienced first-hand the tension arising from that complaint among Democrats, and Republicans’ rejection of it, in a private meeting he held with representatives of the National Jewish Democratic Council and the Republican Jewish Coalition to underscore American Jews’ bipartisan consensus on Israel.

A partisan argument ensued after Representative Debbie Wasserman Schultz of Florida, whom Mr. Obama recently named as chairman of the Democratic Party, suggested they agree not to make support for Israel an election issue. Matt Brooks, executive director of the Republican group, objected, accusing her of proposing a “gag order.”

Article 3.

Foreign Policy

Hey, Bibi: Calling Hamas the al Qaeda of Palestine isn't just wrong, it's stupid

Daniel Byman

MAY 25, 2011 -- In a rousing speech before Congress on May 24, Israeli Prime Minister Benjamin Netanyahu rejected peace talks with the newly unified Palestinian government because it now includes -- on paper at least -- officials from the terrorist (or, in its own eyes, "resistance") group Hamas. In a striking moment, Netanyahu defiantly declared, "Israel will not negotiate with a Palestinian government backed by the Palestinian version of al Qaeda," a statement greeted with resounding applause from the assembled members of Congress. But hold on a minute. Yes, Hamas, like al Qaeda, is an Islamist group that uses terrorism as a strategic tool to achieve political aims. Yes, Hamas, like al Qaeda, rejects Israel and has opposed the peace talks that moderate Palestinians have tried to move forward. And sure, the Hamas charter uses language that parallels the worst anti-Semitism of al Qaeda, enjoining believers to fight Jews wherever they may be found and accusing Jews of numerous conspiracies against Muslims, ranging from the drug trade to creating "sabotage" groups like, apparently, violent versions of Rotary and Lions clubs.

But the differences between Hamas and al Qaeda often outweigh the similarities. And ignoring these differences underestimates Hamas's power and influence -- and risks missing opportunities to push Hamas into accepting a peace deal.

While Congress was quick to applaud Bibi's fiery analogy, U.S. counterterrorism officials know that one of the biggest differences is

that Hamas has a regional focus, while al Qaeda's is global. Hamas bears no love for the United States, but it has not deliberately targeted Americans. Al Qaeda, of course, sees the United States as its primary enemy, and it doesn't stop there. European countries, supposed enemies of Islam such as Russia and India, and Arab regimes of all stripes are on their hit list. Other components of the "Salafi-jihadist" movement (of which al Qaeda is a part) focus operations on killing Shiite Muslims, whom they view as apostates. Hamas, in contrast, does not call for the overthrow of Arab regimes and works with Shiite Iran and the Alawite-dominated secular regime in Damascus, pragmatically preferring weapons, money, and assistance in training to ideological consistency.

Hamas, like its parent organization, the Muslim Brotherhood, also devotes much of its attention to education, health care, and social services. Like it or not, by caring for the poor and teaching the next generation of Muslims about its view of the world, Hamas is fundamentally reshaping Palestinian society. Thus, many Palestinians who do not share Hamas's worldview nonetheless respect it; in part because the Palestinian moderates so beloved of the West have often failed to deliver on basic government functions. The old Arab nationalist visions of the 1950s and 1960s that animated the moderate Palestinian leader Mahmood Abbas and his mentor Yasir Arafat have less appeal to Palestinians today.

One of the greatest differences today, as the Arab spring raises the hope that democracy will take seed across the Middle East, is that Hamas accepts elections (and, in fact, took power in Gaza in part because of them) while al Qaeda vehemently rejects them. For Ayman al-Zawahiri, Osama bin Ladin's deputy and presumed heir-apparent, elections put man's (and, even worse, woman's) wishes above God's. A democratic government could allow the sale of alcohol, cooperate militarily with the United States, permit women to

dress immodestly, or a condone a host of other practices that extremists see as forbidden under Islam. So yes, Hamas, like al Qaeda, talks of an Islamic government, but in practice it makes compromises, as its unity agreement with Abbas and his regime suggests. In power, Hamas has tried to Islamicize Gaza, and its rule in Gaza is notable for its repression, but it has not imposed a draconian regime as did the Taliban in Afghanistan, the only government al Qaeda ever recognized as truly Islamic.

In the end, Hamas is pragmatic. It makes compromises with rivals, cuts deals with potentially hostile foreign sponsors, and otherwise tries to strengthen its political position, even if this exposes it to the charge of hypocrisy.

Nowhere is this more apparent that in Hamas's relations with Israel. Especially since the 2008-2009 Cast Lead Operation, where Israeli forces hit Gaza hard, Hamas has often (though not always) adhered to a ceasefire with Israel. In the months following Cast Lead, only a few rockets were launched at Israel from Gaza, and Israeli officials told me those were probably from other Palestinian groups or were otherwise not an official Hamas action. Gazans did not want to go another round with Israel's army, and Hamas feared alienating them. Yet Hamas tries to maintain its street cred as a resistance organization. It has at times allowed other groups to launch attacks on Israel, and in recent months launched missile salvos itself, risking an end to the de facto ceasefire. Internal pressures within Gaza, particularly criticisms from Salafi-jihadists with ideologies akin to al Qaeda, as well as Israeli attacks on Hamas personnel, have at times led the group to risk further retaliation, but this careful calculation is a far cry from al Qaeda's call for constant struggle.

Hamas needs no reminder that al Qaeda is more foe than friend. Though Ismail Haniyeh, Hamas's leader in Gaza, praised bin Ladin after his death as an "Arab holy warrior," this was largely pandering

to his religious base. In fact, the relationship between Hamas and al Qaeda, and between Hamas and al Qaeda-like jihadists in Gaza, is far more contentious. Zawahiri has blasted Hamas for adhering to ceasefires with Israel, not immediately implementing Islamic law in Gaza, and otherwise deviating from the pure faith of jihadism.

To prevent these ideas from eroding its support, Hamas has harshly repressed al Qaeda-inspired jihadists in Gaza, arresting and even torturing some of the individuals linked to these groups, according to Israeli sources. In 2009, one Salafi-jihadist preacher declared Gaza to be an Islamic state; Hamas stormed the mosque that was his base, killing him and over 20 others.

But the biggest difference is that Hamas is a success while al Qaeda is a failure. Hamas has gone from a small group overshadowed by Yasir Arafat's Fatah to a large and powerful organization. Whether we like it or not, Hamas is the government of Gaza -- and terrorism helped them get there. And with the fall of Mubarak and the emergence of the Muslim Brotherhood in Egypt as an important political actor there, Hamas may gain influence. Al Qaeda, in contrast, is if anything farther from its goals of ending U.S. regional influence and establishing a caliphate than it was 15 years ago.

Despite Netanyahu's rhetoric, Hamas cannot simply be wished away when it comes to the peace process. It represents a large portion of Palestinian opinion, and it has repeatedly demonstrated that it can use suicide bombers, rocket attacks, or other forms of terrorism to disrupt any talks. But the group's occasional pragmatism suggests that under the right conditions it can be convinced not to play the spoiler. Such an effort may fail and involves many sticks as well as carrots, but a similar effort with al Qaeda would be a fool's errand.

Netanyahu's government may be dead-set against talking with Hamas, but treating it like al Qaeda and using this as a reason to not negotiate with moderates like Abbas only convinces skeptical Palestinians that

negotiations will never work. Indeed, the failure to restart peace talks only makes Hamas stronger, making a difficult task impossible in the years to come.

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Article 4.

Bloomberg

Why Palestinians Have Time on Their Side

Jeffrey Goldberg

May 24, 2011 -- If I were a Palestinian (and, should there be any confusion on this point, I am not), and if I were the sort of Palestinian who believed that Israel should be wiped off the map, then I would be quite pleased with Prime Minister Benjamin Netanyahu's performance before Congress this morning.

I would applaud Netanyahu for including no bold initiatives that would have suggested to the world that Israel is alive to the threat posed by its seemingly eternal occupation of the West Bank.

In fact, I would make support for Netanyahu the foundation stone of my patient campaign to dismantle the world's only majority-Jewish country. I would support not only Netanyahu, but the far-right parties of his governing coalition, the parties that seem uninterested in democracy and obsessed with planting more Jewish settlements on the West Bank.

The settlements would have my wholehearted backing. I would encourage my brother Palestinians to help build settlements at a brisk pace. I would ask the Israelis to build an even more intricate system of bypass roads on the West Bank that would connect Jewish settlements to one another and to Israel proper. I would ask my ostensible allies among the Arab nations to provide interest-free mortgages to Israelis in Tel Aviv, so they could move out to the settlements for some fresh air and a little more yard. And, while I was at it, I would insist that my leaders abort their campaign for United Nations recognition of an independent state of Palestine.

Entanglement

My goal: To hopelessly, ineradicably, entangle the two peoples wedged between the Jordan River and the Mediterranean Sea.

Then I would wait as the Israeli population on the West Bank grew, and grew some more. I would wait until 2017, 50 years after the Six Day War, which ended with Israel in control of the West Bank and the Gaza Strip. I would go before the UN and say the following: "We, the Palestinians, no longer seek a homeland of our own. We recognize the permanence of Israeli occupation, the dominion of the Israeli military and the power of the Israeli economy. So we would like to join them. In the 50 years since the beginning of the 'temporary' occupation, we have seen hundreds of thousands of Israelis build communities near our own communities. We admire what they have built, and the system of laws that governs their lives. Unlike them, many of us live under Israeli military law but have no say in choosing the Israelis who rule us. So we no longer want statehood. We simply want the vote."

And this, of course, would bring about the end of Israel.

Apartheid State

Either the Jews of Israel would grant the Palestinians the vote, at which point their country would lose its Jewish majority and its identity as a refuge for the Jewish people, or it would deny them the vote, and become an apartheid state. The latter option is untenable, of course: Many Jewish Israelis would be repulsed by this thought; other nations that already consider Israel a pariah would now have just cause; and Israel would lose its last remaining friend, the U.S., because no American -- including and especially young American Jews -- would identify with a country reminiscent of pre-Mandela South Africa.

If Netanyahu had been thinking strategically, he might have realized this when he went before Congress this morning. And he might have

done something bold: Acknowledge that the age of Jewish settlement is over. He did mention, fleetingly, that certain settlements would be set adrift in a theoretical peace deal. But he seemed unaware that he was delivering a speech that could easily have been given 10 years ago.

It is not 10 years ago. Israel is now 10 years closer to achieving full pariah status. And -- in part because the Palestinians lack the patience to pursue a strategy of gradual, irreversible entanglement -- a moment of truth for Israel is rapidly approaching.

UN Vote

The Palestinians are seeking a UN vote in September on independence. They will prevail in the General Assembly, though not in the Security Council. President Barack Obama, with whom Netanyahu just picked a fight, will have to spend a good amount of political capital to stymie the Palestinian campaign, even though he appears to have nothing but contempt for Netanyahu's lack of vision.

But American opposition to this unilateral declaration will be in many ways immaterial. Israel will soon enough be seen by most of the world as the occupier not of disputed territory but of a foreign country. The Palestinians will wake up to find that a General Assembly vote did not, in fact, give them true independence. And then there will be an explosion.

The Palestinians who are watching Yemenis, Libyans and Syrians fighting for their freedom will soon be inspired to once again take up their own fight.

Existential Threats

Netanyahu, who understands the existential threat posed by Iran, does not seem to understand the nature of this other existential threat. His five predecessors as prime minister -- including Ariel Sharon, whose heart did not bleed for Palestinians -- understood it. President Obama understands it, too.

"The number of Palestinians living west of the Jordan River is growing rapidly and fundamentally reshaping the demographic realities of both Israel and the Palestinian territories," Obama told members of AIPAC, the pro-Israel lobbying group, on May 22. "This will make it harder and harder, without a peace deal, to maintain Israel as both a Jewish state and a democratic state."

An eternal truth of Middle East politics is that the Palestinians never miss an opportunity to miss an opportunity. Lately, though, this has become an Israeli specialty. If Israel misses the chance this year to set the Palestinians on a course toward independence, it will jeopardize its future as a Jewish democracy.

A Magnanimous Vision

Yes, it will be dangerous for Israel to return to its 1967 borders, or anything close. The potential merger between Hamas and the more moderate Fatah is cause for despair, but it should spur Netanyahu to try to split the moderates from the radicals by offering a magnanimous vision for peace. He should realize that it will be fatal for Israel to maintain control over millions of Palestinians who seek what the people of Yemen and Libya and Syria seek: freedom. Absent any hope of progress, the Palestinians will do what they can to undermine Israel. But all they have to do is wait.

Article 5.

The Daily Beast

The Palestinian Right to Dream

Peter Beinart

May 25, 2011 -- I watched Benjamin Netanyahu's speech to Congress with a guy named Fadi Quran. He recently graduated from Stanford, where he double-majored in physics and international relations. He lives in Ramallah, where he's starting an alternative energy company. And he just might rock our world.

Quran is helping to coordinate a raft of Palestinian youth organizations—located in the West Bank, Gaza Strip, Jordan, Lebanon and Syria—all united around one goal: to create a Palestinian Tahrir Square. They organized the unity march that helped pressure Fatah and Hamas to reconcile. Ten days ago, they organized the Nakba Day protests in which refugees marched on Israel's borders.

What they're doing isn't exactly new. Palestinians in the West Bank have been conducting regular nonviolent protests for many years now, often against the separation barrier that stands between them and their fields. But Egypt and Tunisia made Quran and his colleagues realize that nonviolence was possible on a much larger scale. Not everyone in his movement believes in peaceful resistance as a matter of principle, he admitted sheepishly. But they all believe it represents the right strategy. They've been studying the civil rights movement and Gandhi's struggle against the British and the movement that peacefully brought down Slobodan Milosevic in Serbia. No one wants a second intifada, he insisted. "It hurt us much more than the Israelis."

When I asked Quran what his movement believes, I expected to hear about borders and refugees and Jerusalem. Instead, he began talking

about John Rawls and John Locke, a social contract between the government and the governed. A Palestinian government that denies his rights, he insisted, is as offensive as an Israeli one. When I pressed him on whether his colleagues want two states—one Palestinian, one Jewish—or a secular binational one, he seemed strangely agnostic. He said that in an ideal world one democratic state would be better, before adding that of course such a state would have to guarantee the safety and cultural autonomy of Jews. (One of his inspirations, he said, was Martin Buber, the Jewish philosopher who advocated a binational state in the 1920s and 1930s). When I said I didn't consider a binational state very realistic, he conceded the point, before noting that in the age of Netanyahu and Lieberman, most Palestinians don't consider a two-state solution very realistic either. After a while, it hit me: This is what Israelis and American Jews have been demanding all along. Didn't we always say, during the bloody Arafat years, that when the Palestinians produced Gandhis everything would change? We'd never be able to resist; our Jewish hearts would melt. Now that it's starting to happen, I suspect the response will be exactly the opposite: Yes, there's something admirable about young people like Fadi Quran, but who are they kidding. This is the Middle East, not Palo Alto. It's no place for dreamers; they'll get eaten for lunch.

Privately, many in Congress consider settlement expansion a catastrophe and the occupation a disgrace.

Maybe so. But watching over Fadi's shoulder as members of Congress robotically rose to applaud Netanyahu, I couldn't help thinking of the contrast. Anyone who has spent any time around Congress knows that many of the people who applauded Netanyahu—the Jewish Democrats in particular—don't actually support his policies. Privately, many consider settlement expansion a catastrophe and the occupation a disgrace. But they don't want to create

headaches for themselves. Could they say what they really believe and get reelected? Probably—after all, incumbents are very hard to beat. But who needs the hassle?

"What we want to do next," Fadi added, "is freedom rides, like in the South. We'll board settler-only buses and make them arrest us or beat us up." He mentioned that many American Jews had participated in the civil rights movement. "So how will American Jews react if we do this," he asked? "Do you think we'll get any support, given your history?" I started to talk about the way American Jewish politics actually works, about the gap between what people believe and what they say, about the way people wall themselves off from unpleasant realities, and then I stopped. It was too depressing to explain. Fadi Quran has the right to dream.

Peter Beinart is associate professor of journalism and political science at City University of New York and a senior fellow at the New America Foundation.

Article 6.

Asharq Al-Awsat

Hamas' Gaza strongman criticizes Khalid Meshal

25 May 2011 -- Differences and clashes within the Hamas movement have come to light for the first time, with Hamas senior figures verbally sparring and exchanging criticism in the media. This is particularly surprising as Hamas is known for the discipline of its cadres and members.

In an interview carried by the Lebanese Al-Akhbar newspaper on Tuesday, Zahar criticized the statements made by Hamas leader Khalid Meshal on 4 May in Cairo during the signing of the reconciliation agreement between Fatah and Hamas. Zahar said that Khalid Meshal did not have any right to say that Hamas would give Palestinian President Mahmoud Abbas another chance to try to negotiate a peace deal with Israel.

In the interview, Zahar reportedly said "we didn't know and were not consulted about the position of Khalid Meshal, and this is not the correct position." He added "we haven't given any chance for negotiations on behalf of us or the Palestinian people. Our program is against negotiations in this way, because they are a waste of time." Zahar was also quoted as saying that the Hamas power structure should be re-assessed as "the leadership is here [in the Gaza Strip], and the part (of Hamas) that is abroad is just a part of that."

Speaking to Asharq Al-Awsat, Hamas political bureau member Izzat al-Rashaq, commented on the criticisms put forward by Dr. Zahar, stressed that these statements do not represent the position of the Hamas movement.

Al-Rashaq told Asharq Al-Awsat that "the statements made by

brother Zahar are wrong, and do not represent the position of the Hamas movement or any of its institutions. They represent a violation of the organizational traditions followed by Hamas, and are not worthy of being issued against the leader or leadership of the Hamas movement." He added that "Dr. Zahar is not authorized to comment on the statements made by the leader of the Hamas movement…the political bureau is the only institution that is authorized to issue any clarification or explanation on the statements issued by the leadership."

Despite his strong statements, Izzat al-Rashaq denied that Zahar's statements reflect a state of disagreement or division within Hamas, stressing that "there is no disagreement within Hamas, the movement is highly united, and its decisions are one."

Senior Hamas official Dr. Salah al-Bardawil confirmed to Asharq Al-Awsat that the Hamas movement is united, saying that some media outlets are trying to convince the public that there is division within the ranks of Hamas. Al-Bardawil also stressed that Hamas figures have the right to issue their statements using whatever language they wish so long as they are expressing their own views and ideas, and this does not mean that there is a split in the Hamas movement's decision.

Dr. Bardawil also stressed to Asharq Al-Awsat that Hamas is under the leadership of Khalid Meshal, adding that Hamas is a resistance movement that believes that resistance is the means of liberating Palestine, especially after it has became clear to everybody that "it would be a terrible gamble to bet on these futile negotiations."

Article 7.

Military Review

An Old Man's Thoughts on War and Peace

Edward Bernard Glick

May-June 2011 -- WHEN I WAS a young man in graduate school, two books impressed me mightily. They still do. One is Konrad Lorenz's On Aggression. An M.D. and a Ph.D. and a 1973 Nobel laureate in medicine and physiology, Lorenz established the field of ethology, the study of the behavior of animals within their natural environment. In his prologue to On Aggression, Lorenz wrote, "The subject of this book is aggression, that is to say the fighting instinct in beast and man, which is directed against members of the same species." According to him, animals, particularly males, are biologically programmed to fight over resources and turf, and this behavior is part of natural selection. In short, to a great degree, aggressive behavior is innate.

The other book that influenced me mightily as a young man was Robert Ardrey's The Territorial Imperative. Ardrey popularized and expanded on Lorenz's ideas. After reading Ardrey, a Book-of-the-Month Club reviewer asked, "Are we a territorial species? Do we defend ourselves, whether by war or other means, because we have learned to do so—or because, as animals, we must?"

Reading Lorenz and Ardrey provides a good reason for believing the Roman proverb Si vis pacem para bellum, "He who wishes peace should prepare for war." (The full text of the proverb goes on to say, "He who desires victory should carefully train his soldiers; he who wants favorable results should fight relying on skill, not chance.")

War is no longer limited to soldiers in uniform battling each other. War now includes terrorists who do not wear uniforms, do not represent a sovereign state, and use civilian airplanes and motor vehicles to crash into buildings in order to kill their enemies. Despite these changes in war, many pacifists who cling to the notion that war is immoral continue to forget that soldiers, not sermons, stopped Islam from advancing into Christian Europe at the Battle of Vienna in 1683. It was not sermons, but soldiers, who freed the American colonists from Great Britain's rule in 1781, and soldiers, not sermons, truly emancipated America's slaves in 1865 and liberated the survivors of the Nazi death camps in 1945.
Counterterrorism is the predominant form of contemporary war. One might say that, after the attack on New York's World Trade Center on 11 September 2001, Americans divided themselves into the September 10th people, the September 12th people, and the September 13th people. The September 13th people blame the United States for the events of September 11th and think that the proper U.S. response is to abandon American "arrogance" and American support of Israel. The September 10th people reject these notions, but think that terrorist acts are crimes that should be countered only by our law-enforcement and intelligence communities. The September 12th people believe that today's terrorists want to destroy Western civilization, and that acts of terrorism are acts of war that we must counter with mainly military responses.
When it comes to terrorism beyond our borders, passages from an article I published in 1979 about the Iran hostage crisis come to my mind:
The essential question—and it will cause us great pain in every sense if any of the hostages are harmed or are still being held when these words are printed—is the extent to which the Western world in general, the Third World in particular, and the United States

especially, are themselves responsible for this governmentally condoned terrorism.

In its most recurring form, modern terrorism has manifested itself in the confrontation between the Arabs and the Israelis. . . Decades ago, Israel warned the world, particularly the Western nations, that internationally tolerated terrorism is a political virus that knows no boundaries. If left unchecked it would spread to other causes, continents, and countries.

So long as they thought they were immune from the terrorist virus, aloof bystanders could adopt this kind of logic and base their actions and inactions on it. But there are no aloof bystanders. The Tehran terrorists have proven that once and for all. If the countries of the West do not band together against terrorism, whatever the short-term economic sacrifices, their long-term future as truly sovereign states is quite problematical.

Those who hate America like to discuss war within the framework of American imperialism and colonialism. Yes, the United States took land from the native peoples of North America. But so, too, did the French, British, and Canadians. So did the Spaniards and Portuguese in Latin America. So did the Australians and New Zealanders in the South Seas. So did the Russians, Chinese, and Japanese in Asia and Europe. Did the Scots, Welsh, and Catholics of Northern Island want to be a part of Great Britain? Do the Tibetans want to be part of Communist China?

Yes, the United States conquered the Philippines and Puerto Rico in the 1898 Spanish-American War and remained in de facto control of Cuba until 1934. But this country gave the Filipinos independence in 1946, and it has promised statehood or independence to the Puerto Ricans whenever they want to have it.

Yes, President Theodore Roosevelt, influenced by U.S. Admiral Alfred Thayer Mahan's sea-power theories, took advantage of a

revolt against Colombia to acquire what became the Panama Canal Zone in 1903. The new Panamanian government gave the United States the French concession to construct the Canal, which the United States completed in 1914. But President Jimmy Carter returned both the Zone and the Canal to the Panamanians in 1977.

Yes, in 1945, President Harry Truman ordered the U.S. Army Air Force to drop atomic bombs on Hiroshima and Nagasaki, thus ending Japan's participation in World War II. Yes, for a few years, the United States was the only power with nuclear weapons on this planet, but we blackmailed no one. Nor did we take anyone's land. By contrast, the Soviet Union incorporated huge swaths of post-war Poland and Germany.

If we compare the United States to Assyria, Babylonia, Persia, Greece, and Rome—or for that matter, Ottoman Turkey, Spain, Portugal, Japan, Russia, Britain, and France—we can only conclude that the United States was and is the least warlike and least imperialistic super power in history.

Of course, there is the question of war within the context of a nuclear-armed Iran. A few years ago, Thomas Friedman of the New York Times wrote, "I'd rather live with a nuclear Iran because it is the wisest thing under the circumstances." Thomas Friedman may feel this way, but for the leaders of Israel, an Iranian nuclear bomb and its associated delivery systems raise existential questions.

Can the Jewish state live with an Iran that possesses nuclear weapons and the means to deliver them? Can it ignore an Iranian leader who labels the country "a fake regime" that ought to "be wiped off the face of the Earth?" How should it react to President Mahmoud Ahmadinejad's plans for a second Holocaust, even as he denies that the first one ever happened? Millions of Israelis are descendants of those who died in the Holocaust. In 1981, when Iraq threatened Israel, Israel's then prime minister, Menachem Begin, ordered the

Israeli Air Force to destroy Iraq's nuclear reactor and then declared that "Israel has nothing to apologize for. In simple logic, we decided to act now, before it is too late. We shall defend our people with all the means at our disposal."

One sometimes hears the argument that if Iran can live with an Israeli bomb, why can't Israel live with an Iranian bomb? The answer is that no Israeli leader has ever threatened to eradicate Iran.

Iran is a large country, but Israel is a tiny one, smaller than New Jersey. At its narrowest point, it is only nine miles wide. Israel's nuclear arsenal can deter its enemies only if they have the wisdom and the sanity to be deterred. During the Cold War, the Russians and the Americans operated under a political and military doctrine known as MAD, for mutual assured destruction. The doctrine assumed that no matter how bad things got between the Soviet Union and the United States—the 1962 Cuban missile crisis being a case in point—neither side would risk annihilation. The leaders of Iran do not think that way. They reason as follows: "We have 70 million people, and Israel has 7 million. If we attack the Zionists with nuclear bombs, they will respond in kind. If they are lucky, they will kill half of us, but if Allah wills it, we shall kill all of them, and there will still be 35 million of us left."

We humans may enjoy periods of peace—sometimes for a long time—but we shall never entirely rid ourselves of war because we are "wired" to fight over pieces of land. Konrad Lorenz, Robert Ardrey, and Publius Flavius Vegetius Renatus (the man who coined the Latin phrase Si vis pacem para bellum) are correct. So, too, is Max Boot, the American author and military historian. He rejects the "sunny, if ahistorical, Enlightenment faith that peace is the natural order of things and war a temporary aberration."

Like it or not, this is the world in which we have lived in the past. This is the world in which we live now. And this is the world in which we shall live in the future.

Edward Bernard Glick is professor emeritus of political science at Temple University in Philadelphia, where he specialized in civil-military relations.

From: Lesley Groff [redacted]
Sent: 2/28/2013 1:33:32 AM
To: Jeffrey Epstein CC [jeevacation@gmail.com]
Subject: Fwd: INVITE THE NY OBSERVER 25TH ANNIVERSARY
Attachments: 25th-invite_FINAL-52.jpg

Importance: High

Sent from my iPhone

Begin forwarded message:

From: [redacted]
Date: February 27, 2013, 2:55:10 PM EST
To: [redacted]
Subject: INVITE THE NY OBSERVER 25TH ANNIVERSARY
Reply-To: [redacted]

Dear Mr. Jeffrey Epstein

Jared Kushner, New York's youngest powerhouse publisher, is celebrating the 25th Anniversary of the New York Observer on Thursday, March 14th.

Mayor Michael Bloomberg will be by his side to toast you all.

The Observer is honoring those who have defined and shaped New York since 1987. They are celebrating the cities best, brightest and most influential in culture,media and finance. The salmon pink pages are revered among New York's elite as the preeminent voice on power.

The celebration is going to be one of those quintessential New York nights. We are looking forward to seeing you.

xoxo,

Peggy

Jared Kushner, Publisher Joseph Meyer, CEO

Cory Booker Arthur Carter Georgina Chapman Katie Couric Lauren Santo Domingo
Larry Gagosian Mariska Hargitay Carolina Herrera Katie Holmes Woody Johnson
Peter Kaplan Comm. Ray Kelly Ken Kurson Matt Lauer Blake Lively Terry Lundgren
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to join them at

THE NEW YORK OBSERVER
25TH ANNIVERSARY

Thursday March 14th, 2013

6:30-9:30pm
Cocktails & Light Supper

The Four Season Restaurant
99 East 52nd Street
New York City

[redacted] or 212-935-6700
cocktail attire

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New York City

cocktail attire

From: Lesley Groff [redacted]
Sent: 3/7/2013 5:32:30 PM
To: Epstein Jeffrey [jeevacation@gmail.com]
Subject: Fwd: INVITE NY OBSERVER 25TH ANNIVERSARY

Importance: High

Begin forwarded message:

From: [redacted]>
Subject: INVITE NY OBSERVER 25TH ANNIVERSARY
Date: March 7, 2013 7:31:14 AM EST
To: [redacted]
Reply-To [redacted]

Dear Mr. Jeffrey Epstein

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xoxo,

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cordially invite you to join them at

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25TH ANNIVERSARY

Thursday March 14th, 2013

6:30-9:30pm
Cocktails & Light Supper

The Four Season Restaurant
99 East 52nd Street
New York City

[redacted]
cocktail attire

From: JokeLand[redacted]
Sent: 5/9/2015 7:17:32 PM
To: [redacted]
Subject: a JokeLand E-Mail

A guy's walking down the boardwalk in Atlantic City and he runs into a hooker.
He says, "How much?"
She says "A hundred bucks."
He says, "All right."
They climb down under the boardwalk and he bangs her. The next night, he runs into the same hooker, they go under the boardwalk, only this time while he's banging her, she blasts two incredible farts. When they get done, he hands her a hundred and twenty dollars.
She says, "What's the extra twenty?"
He says, "That's for blowing the sand off my balls."

****

Why don't sumo wrestlers shave their legs?
So they won't be mistaken for lesbians.

****

hiya ...
it's beautiful and I already jumped into Long Island Sound!
all's right with the world.
... *well* ...

if you enjoy classic comedy stories ... *please try this!*
me & Bill Maher, Eddie Murphy & *The Jade Fountain* in Paramus, New Jersey!
The Hal Ennis Comedy Caravan, 1979

huge thanks to John Fugelsang & Penn Jillette & Jim Kerr & Mark Simone & Phoenix's *Wild Jokers* for helping me get the word out about my shtuff. love you all much ...
please spread the word about The JokeLand E-Mail List ...
... and enjoy.
Jackie

****

What'd the duck say to the prostitute?
"Put it on my bill."

****

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New York New York
(212) 757-2323

****

Two drunks are on the subway.
The first drunk says, "Wh-what time is it?"
The second drunk pulls out his cigarette lighter, looks at it, and says, "I-it's April 9th."
The first drunk says, "W-we should've got off at the last stop."

****

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@JackieMartling

****

Mrs. Hartke comes home after visiting her relatives for two weeks and finds that her husband, who was too lazy to go to the supermarket, has eaten all the dog food in the house.
She calls the doctor and says, "Doc, you have to do something. My husband ate a half a case of dog food."
The doctor says, "Relax, Mrs. Hartke, it can't hurt him. There's nothing to worry about."
The next day, the doctor answers his phone, and it's Mrs. Hartke.
She says, *"Nothing to worry about,* huh, doc? Well, I hope you're satisfied. My husband's *dead."*
The doctor says, *"Dead?* From eating *dog food?* I can't understand it. What happened?"
She says, "He was lying in the driveway licking his balls and I backed the car over him."

****

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The RRazz Room New Hope

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tickets (888) 596-1027
www.therrazzroom.com

****

9pm Saturday, May 16th
Miami Mike's @ Fairbridge Hotel
130 Route 10
East Hanover, New Jersey
1-877-Uncle-Vin ... 1-877-862-5384
unclevinniescomedyclub.com

****

A WalMart greeter's standing near the entrance with her clipboard when a really, really ugly woman comes in with two kids.

The greeter says, "Are they twins, ma'am?"

She says, "Of *course* not, they're *five years apart.* Why in the world would you think they was *twins?"*

The greeter says, "I couldn't believe anybody fucked you twice."

****

What do you do when a midget's missing?
Put his face on a carton of Half & Half.

****

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please tell everybody you know! *free jokes!* free jokes! ...
***by just e-mailing me,* jokeland@aol.com**

****

What's a gay guy's favorite time of day?
Ate a cock.

****

Why'd the Siamese Twins move to England?
So the other guy'd get a chance to drive.

****

Friedman calls the doctor and says, "Doc, you gotta help me. A mouse ran up inside my wife."

The doctor says, "I'll be right there. In the meantime, wave a piece of cheese between her legs."

The doctor races over, and when he comes in the door, Friedman's waving a herring between his wife's legs.

The doctor says, "What're you *doing?* I said to use a piece of cheese."

Friedman says, "I know you did. But we have to get the cat out first."

****

Why'd the guy marry a Siamese twin?
So he could hang his wife and a girl on the side.

****

A pickle walks into a bar.

The bartender says, "What're you doing in here?"

The pickle says, "Well, for starters, I'm celebrating the fact that I can walk."

****

Why's "bra" singular and "panties" plural?
For the same reason that when you take a shit you actually leave one.

****

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Come Again?, **F. jackie & snart** ...
are available on *Amazon*, *iTunes*,
and at **Oglio.com**

****

A dentist walks in with a needle to give Kasten a shot of Novocain.
Kasten says, "No way! *No needles!* I *hate* needles!"
The dentist starts hooking up the nitrous oxide and Kasten says, "No! *No!* I can't do the gas thing, either!"
The dentist says, "Can you take a pill?"
Kasten says, "Fine."
The dentist reaches into a drawer, takes out a pill and says, "Here's a Viagra."
Kasten says, "Wow. I didn't know Viagra worked as a pain killer."
The dentist says, "It doesn't. But it'll going to give you something to hold on to while I'm yanking out your tooth."

****

Why don't Arabs circumcise their camels?
So they'll have a place to put their gum during a sandstorm.

****

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@JackieMartling

****

How can a husband get his wife to stick her fingers in his asshole more often?
By pretending he doesn't enjoy it.

****

A big fat Polish lady pushes her car into a gas station.
The mechanic says, "What's the matter?
She says, "It conked out."
In a few minutes, it's purring like a kitten.
She says, "What's the story?"
He says, "Crap in the carburetor."
She says, "How often do I have to do *that?*"

****

What'd the blonde say when she saw a guy walking two dogs?
"He must be really blind."

****

A frog goes into a bank and sits down in a chair next a desk that has a placard on it that says "Seymour Paddywhack, Bank Officer."

He says, "I need to borrow some money."

Mr. Paddywhack says, "To do that, you'll need some collateral. What have you got?"

The frog reaches into his bag, takes out a small plaster statue of Elvis and puts it on the desk.

Mr. Paddywhack says, "Is that all you have?"

The frog says, "Yeah."

Mr. Paddywhack says, "Well, that won't do."

The frog says, "I want to see the president."

Mr. Paddywhack leads the frog into the bank president's office, puts the little Elvis on his desk and says, "This frog wants to borrow some money, the only collateral he has is this statue and I don't even know what it is."

The bank president says, "It's a knick-knack, Paddywhack, give the frog a loan."

****

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The Joke Man, **Sgt. Pecker**, **Hot Dogs & Donuts**,
Come Again?, **F. jackie & snart** ...
are available on *Amazon*, *iTunes*,
and at **Oglio.com**

****

A British guy comes home from work early and there's his wife on the living room floor with two guys. She's blowing one guy and the other guy is fucking her.

He says, "`Ello, `ello!"

She says, "So you're not speakin' to me, then?"

****

Where would you find a turtle with no legs?
Right where you left him.

****

What's fifteen inches long and hangs in front of an asshole?

Donald Trump's tie.

****

I call in regularly to the great podcast "**Keith & The Girl**" ...
... give them a listen!

... and huge thanks to **Phil Iazetta** &
iHeart Radio Comedy 24/7 ...
click to listen!
he plays me a-plenty ...

****

The Mother Superior's riding with a few nuns and they're all giggling.
She says, "Calm down, girls, or I'll put the seats back on those bikes."

****

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****

Why'd the shit cross the road?
The chicken forgot to wipe his ass.

****

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****

What do you say to a blonde with a plaid dildo?
"Give me back my thermos."

****

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****

Every night for twenty years, Irving Schwartz gets down on his knees and says, "Lord, it's me, Irving Schwartz. I'm a good Jewish boy. One time, couldn't you let me win the lottery? *One time?* I'm good to my parents, I'm good to my children, I go to temple. Please, Lord, please, one time, let me win the lottery."

He's on his knees every night for twenty years.

"Lord, it's me, Irving Schwartz. Would you *please* let me, sometime, win the lottery?"

Finally one night after twenty years, the heavens open up, and God says, "Irv, if you want to win the lottery, *you've got to buy a fucking ticket.*"

****

this is **The JokeLand E-Mail List**.
if you're not supposed to be on this train, please disembark & get off now.
... and please tell anybody who wants to get on to e-mail me, **jokeland@aol.**com ...

****

What's hairy and bites necks?
Cunt Dracula.

****

An old guy with Parkinson's goes into an ice-cream parlor and says, "I-I'd like an ice cream, p-please ..."

The girl behind the counter says, "What flavor would you like?"

The guy says, "I-it don't matter, I-I'm gonna drop it anyway."

****

Schneider walks into a shoe store and asks for a pair of size 8 tie shoes.

The salesman says, "But, sir, I can see from up here you're at least a size 11."

Schneider says, "Just bring me a size 8 tie shoe."

The salesman brings them, Schneider stuffs his feet into them, ties them tight, stands up and winces.

When he sees how confused the salesman is, he says, "Listen, I lost my business and my house, I live with my mother-in-law, my wife is fucking my best friend, my daughter is pregnant and my son deals crystal meth. The only pleasure I have in life is taking off these fucking shoes."

****

A midget's marooned on a desert island for fourteen years and finally one day he's rescued. When they get him to shore, they ask him what he'd like.

He says, "You know damn well what I'd like."

They take him to a brothel, he goes upstairs with a girl, they go in a room and they both get undressed. Then he puts on a condom, puts some cotton in each ear and puts a clothespin on his nose.

The girl says, "What the hell are you doing?"

The midget says, "If there's two things in this world that I hate, it's the sound of a woman screaming and the smell of burning rubber."

****

Fugelsang says to the doctor, "I'm thinking about having a vasectomy."

The doctor says, "That's a pretty big decision. Have you talked it over with your family?"

Fugelsang says, "Yeah. They're in favor of it, fourteen to three."

****

Two Spanish guys show up at The Gates of Heaven and the first one says, "We want in."

St. Peter says, "Let me go ask God."

He walks over to God and says, "God, there are two Spanish guys at The Gates who want in."

God says, "If they are good people, let them in."

St. Peter goes back to The Gates, and then comes back to God and says, "They're gone."

God says, "The Spanish guys?"

St. Peter says, "No. The Gates."

****

A waiter brings a lady her clam chowder and she sees his thumb is hooked over the cup.

She says, "Waiter, you've got your thumb in my soup."

He says, "Yeah. I got the arthritis, and the warm makes it feel much better."

She says, "Well, why don't you just stick your thumb up your ass?"
He says, "That's what I do in the kitchen."

****

Two little old ladies are sitting at the slot machines in Atlantic City.
The first one says, "D-did you come on the bus?"
The second one says, "Yeah, b-but I made it look like an asthma attack."

****

My ex-girlfriend ... what an asshole ...
... and her tits weren't bad, either.

****

Cristiano says, "Doc, I think I've got a sex problem. I can't get it up for my wife anymore."
The doctor says, "Come back tomorrow and bring her with you."
The next day, Cristiano shows up with his wife.
The doctor says to the wife, "Take off your clothes and lie on the table."
She does it, and the doctor walks around the table a few times looking her up and down.
He pulls Cristiano to the side and says, "You're fine. She doesn't give me a hard-on, either."

****

Did you hear about those new super-sensitive condoms?
After you *fuck her*, they *stay and talk to her.*

****

What would you call a Chinese hooker with a huge vagina?
Gae Ping.

****

for the kids:

What would you call an elephant who never washes?
A smellyphant.

Why don't lobsters share?
Because they're shellfish.

Where do cows learn how to sing?
In moooosic class.

Knock, knock...
Who's there?
Cook ...
Cook who?
Cuckoo? What are you, a *clock?*

Why didn't the skeleton cross the road?
He didn't have any guts.

Why'd Melvin cut a hole in his brand new umbrella?
So he could see when it stopped raining.

Harry's mother says, "Why are you crying, Harry?"
He says, "Because my new sneakers hurt."
She looks down and says, "That's because you put them on the wrong feet."
Harry says, "But these are the only feet I have."

What should you do if your clothes are on fire?
Don't put them on.

END of KIDS' SECTION !

****

There was a Chinee in China,
We thought was a very good climber ...
He slipped on a rock,
Fell and knocked off his cock,
Now that Chinaman's got a vagina.

****

Did you hear about the woman who died from eating too much peanut butter?
She stuck to the roof of her coffin.

****

A midget goes into a bar, and he's too short to see over, so he starts jumping up and down saying, "A whiskey, please," "A whiskey, please."

Nobody's taking care of him, so he keeps jumping up and down saying, "A whiskey, please," "A whiskey, please."

Finally he gets up on a chair, looks over and sees a midget bartender jumping up and down saying, "With ice?" "With ice?"

****

How many vaginas does it take to change a light bulb?
Just one, but is has to be very sticky.

******

classic Rodney Dangerfield:
"Last night my wife met me at the door in sexy lingerie ...
... trouble is, she was coming home. ..."

****

What's the difference between a white cow and a black cow?
A white cow goes, "Moo," and a black cow goes, "Moo out d' way."

****

Schmidlap's been away on business and decides it'd be nice to bring his wife a gift.

He goes into a store and the girl says, "How about some perfume? This bottle is one hundred and fifty dollars."

He says, "That's too much."

She says, "This one's sixty dollars."

He says, "Still too much. I'd like to see something really cheap."

So she hands him a mirror.

****

What's a cowboy call a cowgirl prostitute who won't go all the way?
A hired hand

****

Leeds is parking with a girl in the rain. It's very hot and stuffy and the windows are getting all steamed up, so he cracks open the passenger's side window.

He moves over and starts fiddling with her, and she says, "I'm getting wet," so he keeps fiddling, and she says, "I'm getting wet," and he keeps fiddling.

Finally she says, "Will you *close the fucking window?* I'm getting wet."

****

thanks for enjoying the jokes ...
... if you didn't enjoy them,
I hope you find a used condom at the bottom of your mayonnaise jar ...

****

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****

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thanks,

a JokeLand E-Mail
JokeLand Inc.
Box 58
Bayville, NY 11709
USA

Date: Wednesday, December 27 2017 05:02 PM
Subject: (BN) Leon Black's Tax-Overhaul Dilemma Could Alter Wall Street M
From: Glenn Dubin (DUBIN & COMPANY LP) [redacted]>
To: undisclosed-recipients:;
BCC: jeevacation@gmail.com;

(BN) Leon Black's Tax-Overhaul Dilemma Could Alter Wall Street M
odel

+----------+

Leon Black's Tax-Overhaul Dilemma Could Alter Wall Street Model
2017-12-27 11:00:00.2 GMT

By Simone Foxman and David Carey
(Bloomberg) -- Leon Black recently posed a question whose answer will determine how profitable the new U.S. tax regime could make Wall Street firms like his Apollo Global Management LLC.
Publicly traded partnerships, such as Apollo, are taxed differently than corporations. So should Apollo take advantage of the overhauled tax rules to pay less in taxes? Or should it use this chance to change to an Inc. from an LLC, which would increase its tax bill but allow it to attract investments from mutual funds that have previously been out of reach?
"We're still analyzing," Black told the Goldman Sachs U.S. Financial Services Conference Dec. 6. "It's an uncertain outcome."
Either way, it's most likely a money-making outcome. The tax changes are a boon for private equity firms such as Apollo, where Black is chief executive officer. The new lower corporate rate has made it possible for bigger publicly traded partnerships to consider the change. As it is, management fees, which typically account for 30 percent or more of their earnings, are already taxed at the corporate rate. That will drop. The legislation scarcely touched the 23.8 percent rate paid on incentive fees, also called carried interest, which incur no additional levy when paid out to shareholders.

Double Tax

If the partnerships converted to corporations, the incentive fees would be hit with a second layer of tax when they're paid out. That would push the combined tax rate on incentive income paid out as dividends to nearly 40 percent, according to Peter Furci, co-chair of Debevoise & Plimpton's global tax practice.
But it would also allow the newly minted corporations access to indexes, and therefore the mutual-fund and ETF markets. About $2.2 trillion follows the S&P 500 Index, according to its website. As of June, $122.6 billion in assets tracked the Russell 2000 Index, the best-known small-cap U.S.

stock index, and there was $1.1 trillion bet on Russell U.S. indexes overall, according to the company.
The bigger universe of investors would likely boost the trading multiples of the firms' stocks. It's unclear how big the economic benefit of increased ownership would be, so the question is whether it would make up for the higher taxes.
"There's no way to say how much multiple expansion you could get by converting," said Gerald O'Hara, who follows private equity firms for Jefferies Group. "That's the question here that I think these firms are wrestling with."

Tax Complexity

One of the main reasons the funds have stayed away from private equity managers is tax complexity. Investors in typical stocks receive a Form 1099, a straightforward document that shows interest and dividends on investments at the end of each year. Owners of publicly traded private equity firms' stock get the Schedule K-1 instead. The K-1 shows their share of the partnership's interest, which determines how much the income is taxed. It's a headache, O'Hara said. Plus, firms can be inconsistent on the time of year they send out the forms, and the process of plugging in the numbers on a Schedule K-1 isn't as simple as it is for other kinds of income.
So asset managers, which offer options for many 401(k) investors, avoid buying shares of private equity firms.
On the campaign trail last year, President Donald Trump said he wasn't a fan of Wall Street "paper pushers" like hedge fund managers. He pledged to raise the tax rate on carried interest. The new tax law keeps it unchanged for investments held at least three years.

Hamilton Lane

Proponents of conversion to corporations point to Hamilton Lane Inc., an alternative-investment manager and pension-fund consultant that's a corporation and not a publicly traded partnership. The $1.9 billion company, which went public earlier this year, is now included in dozens of S&P, Russell and WisdomTree Investments Inc. indexes. Hamilton Lane shares have about doubled since the initial public offering.
Ares Management LP, created by former Apollo executives, is the most likely of its peers to make the jump, according to analysts at Keefe Bruyette & Woods Inc. Much of its revenue comes from management fees, so becoming a corporation would hurt its after-tax earnings relatively little.
Bill Mendel of Mendel Communications, a spokesman for Ares, said the firm is studying the situation. Apollo spokesman Charles Zehren of Rubenstein Associates declined to comment.
When Black spoke to the Goldman Sachs conference, he said he was certain of one thing: None of the big publicly traded partnerships wanted to be first to undergo conversion.
"If somebody does go first and their stock doesn't move up,

then you'll know that was a pretty dumb decision," he said. If, on the other hand, the "stock does great, then all of us may have converted" in two or three years.

--With assistance from Ben Steverman and Carolina Wilson.

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November 27, 2015 8:05 pm

In the shadow of quantitative easing, party like it is 1788

John Dizard

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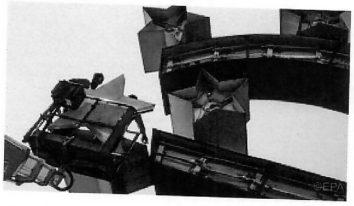
Quantitative easing is leading to the insolvency of insurers and pension plans, says John Dizard



A time traveller from 2010 to today's Europe would be shocked by what they find.

The borderless Schengen area is now festooned with immigration and customs barriers, and financial markets are assuming ever-ballooning asset purchase programmes by the European Central Bank that stretch into an indefinite future. Oh, and a president of the European Commission who says the single currency makes no sense when the Schengen agreement fails.

So then, in this world, what would be the "risk-free rate" that institutional investors can use in their investment analyses? These problems are getting to the point where they not only threaten life in Europe as we know it, but our very careers. America and Canada can afford to make a lot of policy mistakes without social dissolution; Europe cannot.

Specifically, the ECB and its member banks' quantitative easing is leading to the insolvency of life insurers and defined benefit pension plans. This is no longer a worst-case scenario, but the most likely outcome of the present policy course.

Perhaps a couple of years ago this could have been dismissed as so much journalistic whingeing, but now we are getting these projections from eurozone central banks.

Referring to last year's stress test of insurance companies by the European regulator, the Eesti Pank of Estonia now says that "the low interest rate scenario used in the stress test has already arrived, and the current yield curve is already lower than that used in the test. If companies do not take appropriate measures or adjust their operations or strategy, they could face difficulties in meeting their liabilities to policyholders earlier than was calculated."

The same problem applies to defined benefit pension plans, which are what most Europeans are counting on for that part of their retirement income that is not covered by pay-as-you-go state plans.

As the promises to pension, life insurance and guaranteed investment contract beneficiaries are discounted at very low or negative rates, they eat through any reserves or capital the institutions have on hand. At the same time, the institutions earn less and less income from any new securities purchases. This has happened slowly, and, with the curve bending downwards in working populations, quickly.

Someone will have to explain to the pensioners and survivors that they are not getting what they are promised. I would suggest not applying for that particular job opening. The compensation for investment managers who are arithmetically certain to lose money will tend to decline over time.

When someone says I am not smart enough to understand persistent negative real rates (the "persistent" is important), I have to agree. There is no way I could project all the dreadful consequences. However, it would be difficult to match the stupidity of the excuses for the current consensus on central bank policy.

Not that there will be a consensus for much longer. It does not take much reading between the lines of statements such as President Obama's last note in the FT to see that the competitive devaluation implicit in the ECB's policy path is making the leaders of a major currency zone rather cross. And just before a US election year, to twist the knife.

But then it is always an election year somewhere, and it apparently is the job of macroeconomists to come up with plausible stuff to fill out press releases, not to make actual policy.

To their credit, Federal Reserve staff seem quite guileless about the shortcomings of the long-term projections generated by their central model.

Not that the market people are without their sins of oversimplification and formalism. They have stretched VAR models for risk far beyond their real utility. The market's risk managers have the same motivation as the macroeconomists: their bosses want a short answer that supports their compensation plan or political platform.

Enough hard feelings; I am now confident that we in the developed world will succeed in our most important goal. That is to get through the year end and the bonus calculation period without having to put a complete financial disaster on the books. My concerns are about what comes after that.

Next year some of the seemingly endless European processes of regulation writing are coming to an

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end. For example, Solvency II regulations for insurers are scheduled to come into force, which means that the various national publics will have to be told that it will not be possible to pay them exactly what they think they have coming.

Already there is right-to-left German national anger over the proposed eurozone deposit insurance scheme, as if refugees were not enough. That the German distress is counterpointed by apparent Italian government cynicism over budget policy does not help.

In the coming holidays, you should party like it is 1788.

Letter in response to this article:

The saving grace of negative interest rates / From Michael G Mimicopoulos

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Jorge-Tuto Quiroga

Time for a 'Belt and Sea Lane' for Latin America

President Xi Jinping will host dozens of world leaders on Sunday and Monday at the Belt and Road Forum for International Cooperation, as China's Belt and Road Initiative has seized worldwide attention. Right after this important event, the Chinese government should take advantage of the major shifts in the Americas, look across the Pacific and launch a parallel effort: the "Belt and Sea Lane" initiative for China and Latin America (Mexico, the Caribbean, and Central and South America).

Three recent seismic changes have dramatically affected Latin America. First, the economic links that China has developed over the past 13 years with South America. Second, the end of populism in this region. Third, the election of Donald Trump as president of the United States, which will severely damage economic integration in the Americas, as shown by the recent demise of the US-led Trans-Pacific-Partnership agreement. Let us broadly review these three waves to understand the opportunity for China.

South America swayed from the "lost half decade" of 1998-2003, to the "golden decade" of 2004-14, and this change happened mainly because of China. South American nations are rich in minerals, energy and food, which China started buying at growing prices and in ever increasing volumes. China is the main purchaser and price driver for commodities; whether it is copper from Chile, soybeans from Argentina or Paraguay, iron ore and grains from Brazil, gold from Peru, beef from Uruguay, tin from Bolivia, oil from Venezuela and Ecuador, or coal from Colombia.

This economic link became crystal clear in the US financial crisis of 2008 that slowed down the economies of Mexico, Central America and the Caribbean (CAC), which all depend heavily on exports to the US market and remittances from there, but South America kept growing so long as China kept growing. The dividing line became clear: in Latin America, south of the Panama Canal the economic driver is China, north of the Panama Canal it still is the US.

China has become the main buyer of South American commodities, a more important lender and an active investor. The challenge remains to have China become a full blown, long-term development partner for South America.

The Chinese influence in Mexico-CAC is different. Here China is viewed as a competitor for access to the US market with manufactured goods (Mexico) and textiles (CAC), as well a price hiker for food products, and fuel that CAC needs to import. So the Chinese economic influence is dominant in South America. The US has been the prevailing influence in Mexico and CAC, until Trump was elected. The future for Mexico and CAC is now uncertain.

With sky-high commodity prices, South America was governed according to the Hugo Chavez project in Venezuela, the Workers Party (PT) in Brazil, the Kirchner power couple in Argentina, and other like-minded projects in the region. South American coffers were filled by Chinese purchases of oil, grains and minerals, as populist regimes reigned over South America. There was a tendency to nationalize companies, spend freely, set low unsustainable consumer prices, close off free trade and not be very friendly to foreign investment in general.

With the commodity price decline since 2014 (especially oil prices) and voters fed up with and tired of corruption and abuses of populist regimes, the tide turned. More countries now have market-friendly governments. The end of populism in South America bodes well for China, as the current governments are more open to Chinese investment, more open to trade and can assure a better structural framework to collaborate with China.

For the first time in its history, the US has elected a president who combines a protectionist trade position with an anti-migration policy. Trump has particularly targeted Mexico, promising to deport 11 million people, to build a wall by seizing remittances sent from the US, to hike duties for manufactured goods and abrogate the North American Free Trade Agreement. This is very worrisome for Mexico, but it also affects many countries in Latin America that have citizens sending remittances from the US. The trade disruption will eventually affect all CAC countries, as well as Chile, Colombia and Peru, that all have similar free trade treaties with the US.

South America swayed to the "golden decade" of 2004-14, and this change happened mainly because of China.

Taking into account the economic interdependence between China and South America, the end of populism in South America, and the dramatic threats that the Trump administration poses to Mexico and CAC, it is clear that time, circumstances and events are providing a significant opening for China to propose a full-blown partnership with Latin America.

The proposal should seize the opportunity of the "demise" of the Trans-Pacific Partnership agreement. Mexico now needs reliable partners, unlike the US; so will CAC very soon; and South America needs to deepen its strong trade ties with China.

President Xi Jinping can take advantage of his strengthened position as the core leader of China, his commitment to address climate change and his stance as the world's free trade leader, which will help China to extend its Belt and Road Initiative toward Latin America, across the Pacific, with a "Belt and Sea Lane" proposal. The basic elements of it should be trade, loans, investment and respect for human dignity (No deportations. No discrimination). A new trade framework, the active presence of the China-led Asian Infrastructure Investment Bank in Latin America and the expansion of Confucian Institutes should be part of this initiative. Latin America is ready and ripe for such a proposal.

This is the right time to show that while some want to build walls to divide and separate, China wants to build a bridge across the Pacific to integrate and link Asia and Latin America.

Just one opportunity illustrates the potential of a deeper China-Latin America partnership. China is the world's leading manufacturer of lithium batteries, close to 90 percent of the world's lithium reserves are in South America. Our new, deeper partnership can easily prevail in the race to lead the new wave of lithium batteries for cleaner, more efficient development in the 21st century.

The window of opportunity is now the Belt and Sea Lane Initiative for a stronger China-Latin America partnership.

The author is former president of Bolivia.

Robert Lawrence Kuhn

Xi's philosophy for engaging with the world embodied in initiative

The Belt and Road Forum for International Cooperation will be held on Sunday and Monday. How does the initiative express President Xi Jinping's political philosophy with respect to China's foreign and domestic policy?

Xi's foreign policy is to engage the world, safeguard China's core interests, encourage mutual economic development, and facilitate China's emergence as a great power. Xi's domestic policy stresses reform, rule of law, and the realization of an all-round moderately prosperous society, which requires the alleviation of extreme poverty.

Here's how the Belt and Road Initiative enhances the four pillars of China's foreign policy.

A multi-polar world has long been a cornerstone of China's foreign policy, which opposes domination by one or two superpowers. The Belt and Road Initiative engages more than 60 countries along multiple land and maritime routes and exemplifies a multi-polar world.

Peaceful development is China's watchword. It has vowed that no matter how powerful the country becomes, it will never seek domination. The Belt and Road projects are founded on mutual cooperation, shared development and joint construction irrespective of the size or power of the host country.

People-to-people communications are an integral part of the Belt and Road Initiative: multi-channel, multi-level exchanges between peoples to promote mutual understanding. Examples include sister cities, cultural activities, non-governmental organizations, and public diplomacy.

A "community of shared future" is how Xi epitomizes the dreams of diverse peoples in common pursuit of peace and development. In this context, the 2,000-year history of exchanges along the ancient Silk Road provides precedence that different countries, races, religions, beliefs, political systems and cultural backgrounds can achieve peace and share the fruits of their interactions — provided they persist in seeking common goals and mutual trust, equality and mutual benefit, and tolerance and mutual learning.

The Belt and Road Initiative will be successful to the extent that China's principles of domestic development can be adopted and adapted by other developing countries according to their own conditions. Xi's overarching principles for guiding China's domestic transformation are innovation, coordination, greenness, openness and sharing.

How does each relate to the Belt and Road Initiative?

Large-scale infrastructure projects require structural innovation, especially in their financing and investment robustness. (The Belt and Road projects must be financially viable; they are not foreign aid.) The Asian Infrastructure Investment Bank, initiated by China to facilitate projects, is itself a major innovation.

For each Belt and Road project, diverse components, such as the local government, project management, international financing, and foreign and domestic constructing companies must be coordinated so they work together.

China's spirit of openness, as well as its policy of opening-up policy catalyzed the country's economic development.

As developing countries are more concerned about economic development than environmental protection, the short-sighted move of shipping off polluting industries to them should be guarded against. If Belt and Road projects pollute host countries, local populations will come to resent China. Environmental protection and green development are essential.

China's spirit of openness, as well as its opening-up policy catalyzed the country's economic development. This same spirit and policy can energize countries along the Belt and Road while respecting local cultures and conditions. But what worked in China, if transplanted wholesale, will likely not work elsewhere. The challenge for developing countries is to adapt what makes sense for their own conditions.

Sharing is the essence of the Belt and Road Initiative. It is the proper spirit for all human beings and it is essential for maintaining global stability. Inequalities are a primary cause of instability. Shared development is as much a matter of transferring experience as it is of transferring money.

Just as these five major development concepts are transforming China's society and rebalancing China's economy, the Belt and Road Initiative can transform the developing world's infrastructure and rebalance the entire global economy.

China cannot aspire to global leadership by means of power alone. Economic and military strength, while necessary, are not sufficient. There must also be a moral or ethical arc to China's rise, and this includes Belt and Road projects. China, as Xi asserts, should "balance justice and benefits, stress faithfulness, value friendship, carry forward righteousness, and foster ethics."

There will be challenges: unforeseen events that China will have to handle with sensitivity. But can China demonstrate moral as well as economic leadership?

The author is a public intellectual, political/economics commentator, and international corporate strategist.

Erik Solheim

ESTABLISHING GREEN ROUTES FOR GROWTH

There was a time not long ago when most big social and economic challenges were domestic. With good policies and good implementation of those policies, many countries could tackle these problems alone. China's recent success in lifting millions of people out of poverty is a perfect example of this.

But today, our challenges are not only domestic, and they are not only social and economic.

Climate change, pollution, and the loss of biodiversity are environmental issues that spill over borders.

And today, issues such as poverty, inequality, peace and security are not only problems facing individual countries.

These are global challenges. They must be tackled collectively.

A number of countries are leading the way in fostering international cooperation. China, with its Belt and Road Initiative, is one of them.

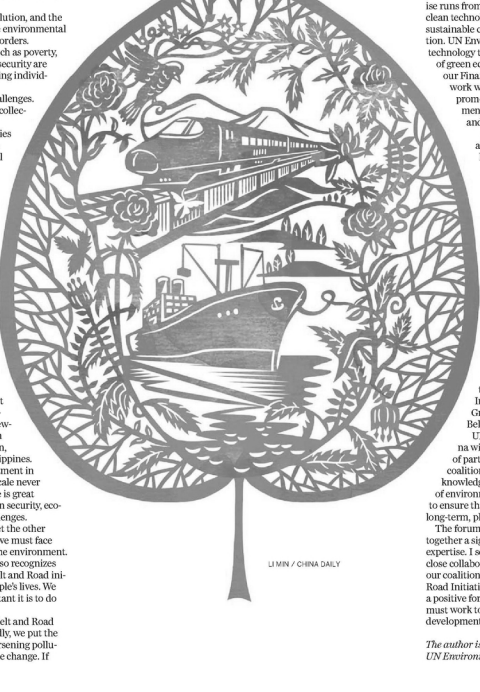
Evidence of this can be seen in Ethiopia, where China has helped to build a metro system in Addis Ababa, and in Kenya, where a standard gauge railway is being built to link the port of Mombasa first with Nairobi, and ultimately with neighboring Uganda, Rwanda, and South Sudan. In recent years, Chinese companies have aslo led renewable energy projects in places such as Pakistan, Thailand and the Philippines.

Such massive investment in development is on a scale never before seen. And there is great progress to be made on security, economic and social challenges.

But we cannot forget the other global challenge that we must face together: protecting the environment.

UN Environment also recognizes the potential of the Belt and Road initiative to improve people's lives. We also know how important it is to do this sustainably.

If we do not make Belt and Road projects climate friendly, we put the world at risk from worsening pollution and severe climate change. If done right, millions will see the benefits of green growth.



LI MIN / CHINA DAILY

Now is the time to do it right and make Belt and Road as green as possible.

That is why UN Environment signed an agreement with the Chinese Ministry of Environmental Protection in December to promote the sustainable development of the Belt and Road.

There are many ways we will support this. Our environmental expertise runs from sustainable finance and clean technologies to ecosystems and sustainable consumption and production. UN Environment can support technology transfer and the creating of green economy policies. Through our Finance Initiative, we can work with private investors to promote sustainable investment practices along the Belt and Road.

But we cannot do it alone. Many other stakeholder groups, investors, and businesses have valuable expertise to bring to the table. And many Belt and Road countries have asked specifically for such support to make sure that the Belt and Road Initiative helps them meet their sustainable development needs.

And so, at the Belt and Road Forum for International Cooperation in Beijing this week, UN Environment and China's Ministry of Environmental Protection will announce the International Coalition for Green Development on the Belt and Road.

UN Environment and China will bring together dozens of partner organizations in this coalition. We want to draw knowledge from the largest body of environmental expertise possible to ensure that Belt and Road brings long-term, planet-friendly growth.

The forum this week will bring together a significant portion of that expertise. I see it as the beginning of a close collaboration and hope to grow our coalition. We all want the Belt and Road Initiative to fulfil its promise as a positive force for development. We must work together to ensure that development is sustainable.

The author is head of UN Environment.

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CHINA

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"Developing nations in Central Asia, Europe, Southeast Asia, Africa and other regions need to have our news perspectives and voices heard."

Wilson Flores, columnist at the Philippine Star newspaper

COMMERCE

Trade initiative is 'direction of future'

Expert: Belt and Road strategy will be applauded years from now as visionary

By TANG YUE in Xi'an
tangyue@chinadaily.com.cn

The first US presidential debate might have been the most-watched event around the globe on Monday night local time, with the expected protectionist remarks made by candidates Donald Trump and Hillary Clinton.

Yet, at the same time, across the Pacific Ocean, the Belt and Road Initiative, launched by China three years ago to foster economic ties, gained momentum as media from China and abroad expressed support.

"I know many people think the most important event today is the debate, which is going on right now," Robert Kuhn, a US expert on China and a host on China Central Television, said on Tuesday at the media session of the International Seminar on the Belt and Road Initiative in Xi'an, Shaanxi province.

"However, looking back in 50 years or 100 years, I believe this is a more important event than the debate because it pushes forward an important initiative that is the direction of the future," Kuhn said at the two-day seminar. China Daily is a co-organizer.

In 2013, President Xi Jinping proposed the Silk Road Economic Belt, which includes countries situated on the original Silk Road, passing through Central Asia, West Asia, the Middle East and Europe, as well as the 21st Century Maritime Silk Road, which covers Southeast Asia, Oceania and North Africa.

Robert Kuhn (right), a US expert on China and a host on China Central Television, speaks at the media session of the International Seminar on the Belt and Road Initiative in Xi'an, Shaanxi province on Tuesday. HUO YAN / CHINA DAILY

By the end of June, China had signed cooperation agreements with more than 30 countries regarding the initiative and is working with another 20 on capacity building projects in the manufacturing sector, according to a report by Renmin University of China.

"Some countries that start to turn inward, start to talk protectionism, seem to be more skepical about trade. This initiative is moving in the opposite direction. It promotes cooperation and business across the border," said Jason Eugene Subler, Greater China bureau chief of Reuters.

Some 100 media representatives from about 20 countries attended the seminar and reached a written consensus to be "a champion of the Silk Road Spirit", referring friendship and cooperation throughout history, and to be "an active supporter of the initiative".

Wilson Flores, a columnist at the Philippine Star newspaper, said the initiative allows the media in participating countries to better cooperate and to enrich the diversity of media voices, which has long been dominated by Western news organizations.

"As we evolve into a more diverse and multipolar world, developing nations in Central Asia, Europe, Southeast Asia, Africa and other regions need to have our news perspectives and voices heard."

Kang Bing, deputy editor-in-chief of China Daily, suggested that media organizations along the route can jointly identify topics to cover, develop applications together, co-produce microvideos and launch special columns, reports and web pages on the platform of other countries.

INFRASTRUCTURE

Big money sought to connect Asia-Pacific

By CHEN YINGQUN
in Yangzhou, Jiangsu
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Joint efforts are needed by Asia-Pacific countries to create innovative financing mechanisms to develop infrastructure, according to an official at a connectivity symposium in Yangzhou, Jiangsu province, on Tuesday.

Huang Mengfu, honorary chairman of the China National Committee for Pacific Economic Cooperation, said at the symposium — the International Symposium: Connecting the Connectivities in Asia Pacific — that in 15 to 20 years, global demand for infrastructure investment will reach $50 trillion.

According to the World Economic Forum, annual demand globally is currently $3.7 trillion, but as there is a $1 trillion shortage of investment, actual investment is about $2.7 trillion, Huang said.

"No single economy or any international organization can afford to cover such a huge margin. I believe we especially need to mobilize the participation of private capital in connectivity, and we should make full use of public-private partnerships," Huang told representatives from more than 20 Asia-Pacific countries and regions at the event.

Zhou Qiangwu, head of the Ministry of Finance's International Economics and Finance Institute, said connectivity in the Asia-Pacific region currently lacks capital, as well as mechanisms to maximize its use.

"It may take a long time for investors to make a profit by investing in infrastructure projects in the connectivity area, and sometimes there are even political and technical risks. As a result, private capital is reluctant to invest in it," he said.

However, there is currently about $35 trillion in idle private capital in the Asia-Pacific region, Zhou said. Multilateral development organizations could bring in more private capital and help reduce risks through creative financing tools, Zhou said.

Huang, the chairman, added that the Asia Infrastructure Investment Bank could help channel financial support to infrastructure construction.

TRANSPORTATION

Final section of bridge to Hong Kong, Macao completed

By ZHENG CAIXIONG
in Zhuhai, Guangdong and
SHADOW LI in Hong Kong

Installation of the final 35-metric-ton piece of the Hong Kong-Zhuhai-Macao Bridge — an expansion joint — was completed on Tuesday, marking the start of the next phase of the gigantic bridge project.

Zhu Yongling, director of the bridge authority, made the announcement in Zhuhai, Guangdong province, on Tuesday after the installation was completed.

"This means construction of the 22.9-kilometer-long bridge, which is a major component of the project, has been completed," Zhu told media.

Experts said the bridge, which is expected to open before the end of 2017 will play a significant role in enhancing economic ties between Hong Kong, Macao and Guangdong.

Chen Guanghan, vice-dean of the Research Institute of the Development of Guangdong, Hong Kong and Macao, said the bridge will help Hong Kong further expand its development space when it advances its cooperation with the vast western part of the Pearl River Delta region in Guangdong after traffic begins to flow.

"The western part of the delta region, which includes the prosperous cities of Zhuhai, Zhongshan, Jiangmen, Yangjiang and Taishan, still has huge room for expansion and cooperation with Hong Kong," Chen said on Tuesday.

"Meanwhile, Zhongshan, the hometown of Dr Sun Yat-sen; and Jiangmen and Taishan, the hometowns of myriad overseas Chinese living around the world, have rich tourism resources for further development," he said.

Above: Workers celebrate the completion of major construction work on the Hong Kong-Zhuhai-Macao Bridge on Tuesday. ZHONG FAN / FOR CHINA DAILY
Left: The bridge stretches 22.9 kilometers over the water. LI JIANSHU / FOR CHINA DAILY

"The bridge will help accelerate the development of Hong Kong's international airport and its ports and the development of Hong Kong's Lantou Island area," Chen said.

It is also expected to help Hong Kong's airport and ports to attract more businesses, Chen said.

Chen urged Hong Kong to build more major shopping centers and malls on Lantou Island, with its rich tourism resources, to meet the demand from the large number of mainland residents who are expected to visit Hong Kong after the bridge opens.

Song Haiyan, associate dean of Hong Kong Polytechnic University, predicted that the bridge will positively affect the economies of all three cities.

Song said he does not believe the bridge will necessarily bring a great surge in tourist traffic, but it will have a positive effect overall, presenting yet another option in addition to plane, train or ferry for travel between Hong Kong and the mainland.

Hong Kong lawmaker Lo Wai-kwok said the bridge will fortify Hong Kong airport's pivotal role in the region, connecting the western Pearl River Delta and shortening the journey from Zhuhai to Hong Kong.

Lo said he is confident the bridge will be finished on time, noting that the most difficult part is now complete.

The 55-kilometer bridge includes a 6.7-kilometer underwater tunnel and a 22.9 kilometer bridge that passes over the sea, making it the longest cross-sea bridge in the world.

Construction of the Y-shaped bridge started in 2009 and will cost more than 10 billion yuan ($1.5 billion). It is part of the country's planned national highway network, linking the western and eastern banks of the Pearl River.

Once in operation, the bridge will help shorten the current four-hour drive from Hong Kong to Zhuhai to half an hour.

The service life of the bridge is expected to be more than 120 years.

Hong Kong-Zhuhai-Macao Bridge

Contact the writers at zhengcaixiong@chinadaily.com.cn

SECURITY

China, India to enhance efforts against terrorism

By ZHANG YAN
zhangyan1@chinadaily.com.cn

China and India will enhance law enforcement cooperation to fight cross-border terrorist attacks amid increasing threats to the region, according to the Ministry of Public Security.

The agreement was reached at the first China-India Dialogue on Counterterrorism and Security held in Beijing on Tuesday.

During the conference, China and India expressed their concerns and exchanged views on combating terrorist attacks and conducting extensive security cooperation. They also reached consensus on practical measures to cope with the threat.

Establishing a China-India counterterrorism dialogue mechanism will play an essential role in "enhancing their mutual trust and deepening pragmatic judicial cooperation to fight terror attacks, and in maintaining regional security and stability", said Lan Jianxue, a researcher at the China Institute of International Studies.

Under such a complex security situation, it's urgent for the two countries to "seize a rare opportunity to create a special dialogue, which will eliminate previous suspicions and guide them to implement their counterterrorism action plans", Lan said.

Last November, China and India issued a joint statement to strengthen their judicial cooperation to handle terrorist crimes.

Although some achievements have been made, challenges still hinder progress in deepening judicial cooperation, observers say.

"It's necessary for us reach a consensus on terrorism's definition and scope, and on conviction standards," said Su Qiang, a Beijing-based lawyer who specializes in researching regional security in South Asia and the Middle East.

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Briefly

BEIJING

Website launched to broadcast trials

China launched a website, tingshen.court.gov.cn, to broadcast court trials live on Tuesday. The live trials will involve various cases and better safeguard people's rights to know and to supervise, Zhou Qiang, head of China's Supreme People's Court, said at the launch ceremony.

Police told to record activities

Police forces across China must record the whole processes of their law enforcement activities, under a guideline released on Tuesday by the State Council, China's Cabinet. The regulation calls for police authorities to better digitalize officers' activities, and present all cases on the internet, except those involving State secrets.

NINGXIA

Mine explosion kills 12, traps 8

Twelve people were killed and eight others remain trapped on Tuesday evening after an underground gas explosion at a coal mine in Shizuishan, local authorities said. The explosion occurred around 7 am in a mine run by Linli Coal Mining Co. Local authorities launched an emergency rescue response and sent senior officials to coordinate rescue efforts at the site.

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Initiative marks transition of grand vision

By **Robert Lawrence Kuhn** | China Daily | Updated: 2017-05-13 08:55

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The Belt and Road Forum for International Cooperation marks a transition of high symbolism in President Xi Jinping's grand vision for a new era of win-win globalization. The core idea is to structure, finance and build critical infrastructure in developing economies, as well as diversify and expand the Chinese economy, which needs restructuring.

This is the fourth Belt and Road forum I will attend.

Xi announced the Silk Road Economic Belt as a "grand cause benefiting people in regional countries along the ancient route" in Kazakhstan in September 2013. In

June 2014, I was asked to articulate the vision at the first Belt and Road forum in Urumqi, Northwest China's Xinjiang Uygur autonomous region. I described five categories: history, culture, trade, mutual development and peaceful development.

The second forum was in Quanzhou, Southeast China's Fujian province, in February 2015. It enlarged the vision to include the 21st Century Maritime Silk Road, engaging Southeast Asia, South Asia, the Middle East and East Africa.

The third forum was held in Xi'an, Northwest China's Shaanxi province, in September 2016, with the theme "Shared Memory, Common Development".

To comprehend Xi's Belt and Road Initiative, one must appreciate globalization, which is founded on the perennial law of comparative economic advantage but which is suffering discontent due to its differential impact on workers in Western countries. In a reversal of historic proportions, China now champions globalization, while the United States is now conflicted with "America First" protectionism.

China's developmental miracle is founded on globalization, as Chinese workers made China the low-cost manufacturing center of the world.

But China's old model no longer works – for one, workers must be paid higher salaries to rebalance severe socio-economic imbalances. China must develop new modes of globalization, leveraging its expertise and experience, especially in infrastructure construction, which is just what the developing economies need for their development.

The initiative is to expand links between Asia, Africa and Europe, and thus reduce imbalances in national development and promote global economic growth. It focuses on projects such as high-speed railways. Development comes first, China believes; nothing good can happen without economic growth.

The Beijing forum seeks consensus on major cross-regional projects, especially networks of roads, railways and shipping.

At the Xi'an forum, I chaired a session (on the media), which was held at precisely the same time as the first debate between US presidential candidates Donald Trump and Hillary Clinton.

"One hundred years from today," I began, "when the history of our times is written, our forum on the Belt and Road (Initiative) will carry more significance than the

Trump-Clinton debate."

I was joking in one sense, but not in another. Why is the initiative so significant? From the global perspective, poverty, under-development, and vast inequalities are deep, seemingly intractable problems – and economic development, catalyzed by infrastructure construction, is an essential part of the solutions.

From China's perspective, after decades of remarkable growth, economic transformation is necessary, and this includes geographical rebalancing within China and expanding China's trade by enhancing globalization.

All of these can be achieved by the initiative, but only if formulated synergistically and implemented assiduously. There are substantial challenges, of course – economic, financial, structural, political instability, nationalism, terrorism and, in certain circles, suspicion of China's motives.

But for sure, the world has great need and China has a grand plan in the Belt and Road Initiative.

The author is a public intellectual, political/economics commentator, and international corporate strategist.

http://africa.chinadaily.com.cn/opinion/2017-05/13/content_29330010.htm

Why S&P vol dispersion may be the best way to trade a bubble in Tech

Bank of America Merrill Lynch

06 June 2017

we estimate 68% of the

US

How to detect and position for a potential Tech Bubble

Our investment strategists recently warned against the risk of an overshoot in US Tech, as data on valuations, relative performance, and inflows invoke echoes of the late '90s. However, rising Tech vol alongside rising Tech stock prices – a classic sign of an asset bubble – has yet to materialize, suggesting still early stages of bubble formation. Derivatives can be a key tool for trading bubbles, allowing investors to capture asset price upside while mitigating reversal risk. To this end, we like stock replacing FANG positions or overlaying Tech exposure with Nasdaq 100 (NDX) put spreads. Long volatility dispersion strategies are particularly well-suited for trading asset bubbles, in our view, as they can profit from *both* the inflation and deflation of a bubble without needing to time the top. Specifically, we like SPX 12M Top50 dispersion to position for a potential Tech Bubble as (i) the Top50 basket is dominated by Tech stocks, hence would benefit from any rise in their vol from currently low levels; (ii) the trade would benefit from any downward pressure on broad-market correlations as Tech stocks decouple from other large caps; and (iii) the late '90s Tech Bubble generated the most sustained period of elevated S&P vol dispersion in history.

Europe

DTE Sep17 collars can hedge DTE-TMUS merger risk; value in Enel bullish riskies

DTE GY has run too fast, too quick: investors who own stock should consider hedging a pullback using a Sep17 collar (+17put/-18 call for 46bps) to hedge losses greater than 2.9% while retaining upside to 18 (stock's ~15yr high is 18.05). Extending our EU equity vs credit theme to single names, we find Enel 3m bullish risk reversals screen attractive as Enel's projected 12m div yield is high versus Enel CDS (suggesting value in owning equity vs credit) and the price of 3M bullish risk reversals is low (versus other names) as well as versus history (2nd 5y percentile).

Asia

Buy best-of puts to cheaply hedge a reversal in the melt-up rally

While still high central bank liquidity may continue to push markets higher, heavy equity and option positioning suggests the risk of a market reversal. To minimize the cost of hedges and take advantage of the recent decline in volatility and correlation, we suggest owning 14-Sep-2017 95% strike best-of puts on KOSPI2/HSI/NKY at 0.8%, a 45% discount to average vanilla puts.

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Table 1: 3M volatility (weekly changes)

	Implied	Realized
S&P500	9.5 (-0.1)	7.3 (-0.4)
ESTX50	13.0 (-0.4)	11.1 (-0.6)
FTSE	10.6 (0.4)	9.2 (-0.5)
DAX	12.2 (-0.7)	9.9 (-0.7)
NKY	14.2 (-0.2)	12.5 (0.1)
HSI	12.4 (0.3)	10.1 (-0.2)
KOSPI	12.8 (-0.3)	10.6 (0.0)
EEM US	15.4 (-0.1)	13.2 (-0.8)
TOP40	15.1 (1.0)	10.9 (0.0)
RDX	24.7 (1.2)	21.9 (0.0)
IBOV	25.3 (0.5)	26.4 (-0.2)
ISE30	19.6 (-0.2)	14.0 (-0.4)

Source: BofA Merrill Lynch Global Research

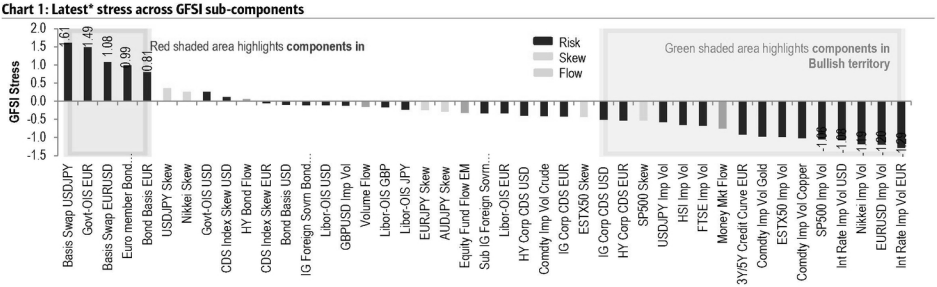
BofAML GFSI™ X-Asset Risk Landscape

GFSI below 'normal' for longest period since summer 2014

The GFSI continued its decline last week, falling to -0.21 as of 2-Jun from -0.17 a week prior. The indicator last spent a significant proportion of time below -0.2 back in summer 2014, when cross asset volatility recorded long term lows.

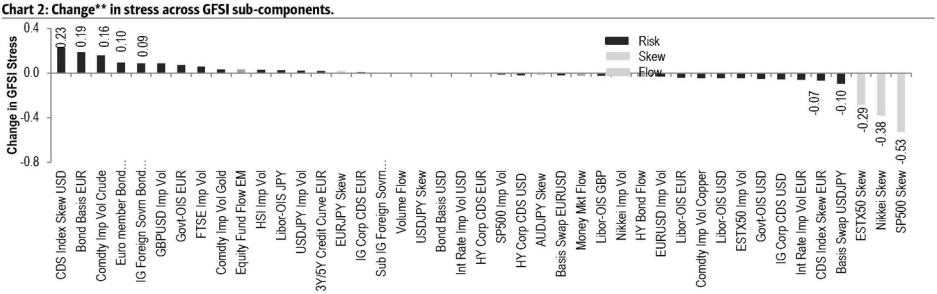
- **Equity risks led the broad based decline in stress across asset classes** (Chart 2 and Chart 3), led by equity skew.
- **While most stresses fell, crude oil volatility was among the top gainers** (Chart 2) as oil continued its slide despite the May OPEC meeting seeing agreement for extending production cuts.
- **Also, Euro member bond spreads recorded a historically significant move higher** (Chart 5) as the potential for early Italian elections causing political instability amidst ECB tapering revived concerns about European sovereign risk

Chart 1: Latest* stress across GFSI sub-components



Source: BofA Merrill Lynch Global Research. *Latest as of 2-Jun-17.

Chart 2: Change in stress across GFSI sub-components.**



Source: BofA Merrill Lynch Global Research. **Latest as of 2-Jun-17. Change vs 1 week prior (26-May-17).

The GFSI Risk Allocator (using Bull, Bear & Neutral weights of 2, 0, 1) suggested a 21.7% overweight position on 2-Jun (vs 13.0% OW as of 26-May). The percentages of Bullish, Bearish and Neutral GFSI components (as used in the Risk Allocator) as of 2-Jun were 30.4%, 8.7% and 60.9% respectively.

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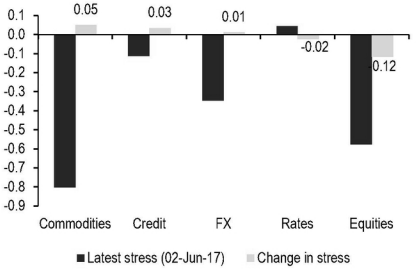
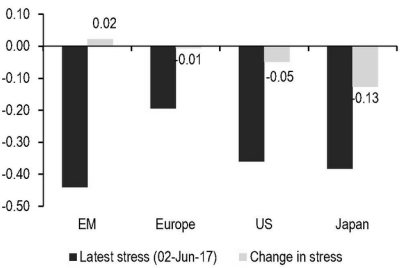
Chart 3: Equity stresses fell by the most last week



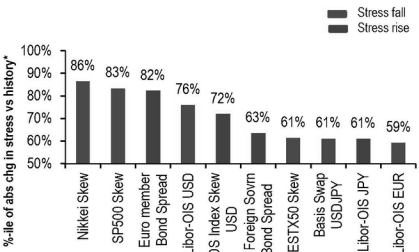
Source: BofA Merrill Lynch Global Research. 1wk change (26-May-17 to 2-Jun-17).

Chart 4: Among regions, Japan & US stresses declined the most



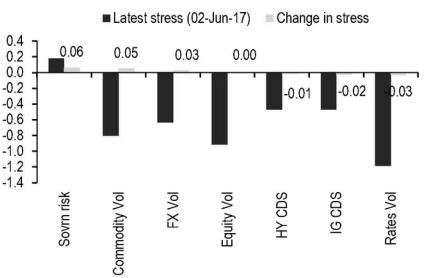
Source: BofA Merrill Lynch Global Research. 1wk change (26-May-17 to 2-Jun-17).

Chart 5: Top 10 movers in stress (1-week abs chg %-ile vs history*)



Source: BofA Merrill Lynch Global Research. * %-ile of weekly move in stress vs all historical weekly moves (earliest 3-Jan-00). Bar colours represent: rise (red) or fall (green) in stress. 1wk change (26-May-17 to 2-Jun-17).

Chart 6: Global volatility & credit spread stress in the GFSI



Source: BofA Merrill Lynch Global Research. 1wk change (26-May-17 to 2-Jun-17).

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Volatility in the US

How to trade the rise & fall of a potential Tech Bubble

"Alexa, has the Tech Bubble started?"

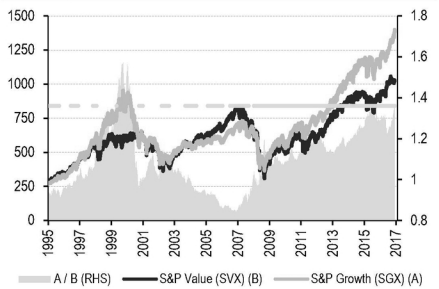
Our investment strategists recently warned against the risk of an overshoot in Tech, noting that the longer it takes Central Banks to tighten, the greater the risk of Tech and Growth stocks entering a speculative frenzy. Data on relative performance, valuation, and flows are reminiscent to varying degrees of the early stages of a bubble:

- **Market cap hegemony**: Following the GFC, Tech stocks ousted Financials from their top position in terms of market cap and now account for 23% of the S&P500, the highest %-age from any single sector since the dotcom bubble (Chart 7).
- **Dazzling growth vs. value outperformance:** S&P 500 Growth stocks (SGX) on aggregate cost ~1.4x as much as their Value counterparts (SVX), the largest premium since the dotcom bubble (Chart 8). Notably, the S&P 500 Growth index is dominated by Tech stocks, which account for 36% of its total market cap.
- **Third longest streak of monthly gains:** In May, the Nasdaq 100 recorded its seventh consecutive monthly gain, the longest streak since 2009. Remarkably, the index has managed to establish a longer streak only twice in its history, in 1986 (10 consecutive months) and in 1995 (8 months). The rally in these two episodes ultimately came to an abrupt halt. However, the index would have substantial further upside from current levels if it were to achieve similar gains (Chart 9).
- **Lofty valuations:** The valuation of Tech as measured by price to consensus forward 12M earnings expectations recently hit its highest value since Nov-07 and is exhibiting signs of acceleration (Chart 10). However, Tech remains far cheaper than its dotcom bubble highs.
- **Irrational exuberance:** Inflows to Tech funds are rising at their fastest annualized rate (25% of AUM) in 15 years, a sign of renewed exuberance.

Chart 7: The last instance where a single sector dominated SPX market cap as the Tech sector does now was the dotcom bubble era

Source: BofA Merrill Lynch Global Research. Monthly data from Jan-1990 to Jun-17.

Chart 8: Growth has only been relatively more expensive vs. Value during the peak of the dotcom bubble



Source: BofA Merrill Lynch Global Research. Daily data from 30-Jun-95 to 5-Jun-17

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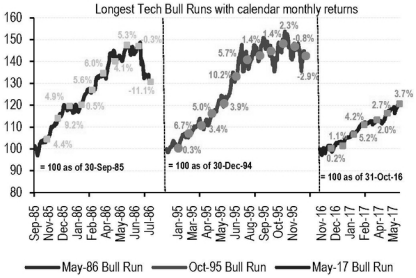
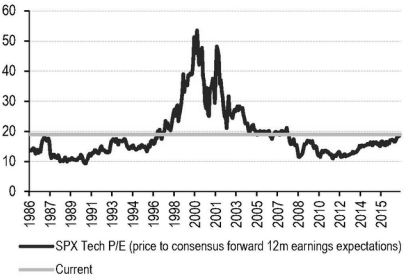
Chart 9: In May, the Nasdaq recorded its longest streak of monthly gains since 2009 (7M). However, compared to the only other instances of longer streaks ('86, '95) the current bull run is still only half the size



Source: BofA Merrill Lynch Global Research. Data from Sep-85 to 31-May-17

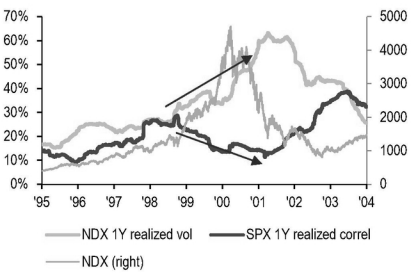
Chart 10: Tech valuations seem to be gaining momentum and are now at their highest levels since before the GFC but remain far from dotcom bubble peaks



Source: BofA Merrill Lynch Global Research. Monthly data from Jan-86 to May-17.

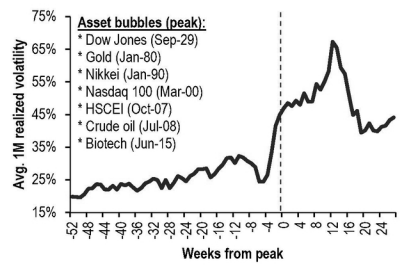
In addition to strong price performance, lofty valuations, and exuberant inflows, asset bubbles also tend to have two other hallmarks, best seen through the derivatives lens: (i) asset volatility rising alongside asset prices (Charts 11 & 12), and (ii) declining correlation as assets closest to the source of the bubble decouple from those farther removed (Chart 11).

Chart 11: During the 2000s Tech Bubble, Tech vol rose with Tech stocks and broader market correlations fell as Tech stocks decoupled from other large caps – both classic signs of an asset bubble



Source: BofA Merrill Lynch Global Research. Daily data from 3-Jan-95 through 31-Dec-03.
SPX correlation = average pairwise realized correlation of all 500 stocks.

Chart 12: Historically, in major asset bubbles, realized volatility has tended to rise meaningfully not only after the bubble deflates, but also in the run-up to the market peak



Source: BofA Merrill Lynch Global Research.

While Nasdaq 100 (NDX) implied volatility has spiked in recent weeks and now trades in the 94th percentile as a spread to S&P 500 (SPX) implied volatility (Chart 14), the absolute level of NDX 3M implied vol remains historically low (2nd percentile since Jun-09). In our view, at least for now, the spread widening is more of a response to the outsized sell-off seen in Tech stocks on 17-May rather than the volatility market trying to price in the onset of another Tech Bubble. Indeed, the -2.5% drop in the NDX on 17-May was a six standard deviation (6σ) event relative to trailing realized volatility (and the fourth worst risk-adjusted daily return since 1985), even more extreme than the 5σ decline experienced by the S&P.

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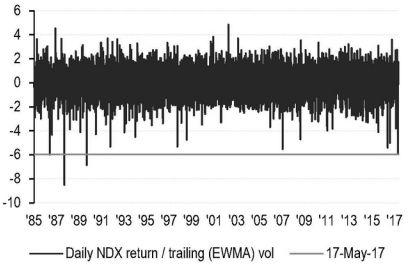
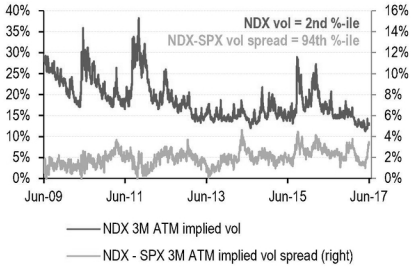
Chart 13: The -2.5% drop in the NDX on 17-May was a six standard deviation (6σ) event relative to trailing realized volatility and the fourth worst risk-adjusted daily return since 1985



Source: BofA Merrill Lynch Global Research. Daily data from 4-Feb-85 through 2-Jun-17. EWMA = exponentially-weighted moving average realized volatility with lambda = 0.94.

Chart 14: The 6σ sell-off in the NDX on 17-May has helped drive short-dated Tech implied vol higher relative to S&P vol, although the absolute level of Tech vol still remains historically low

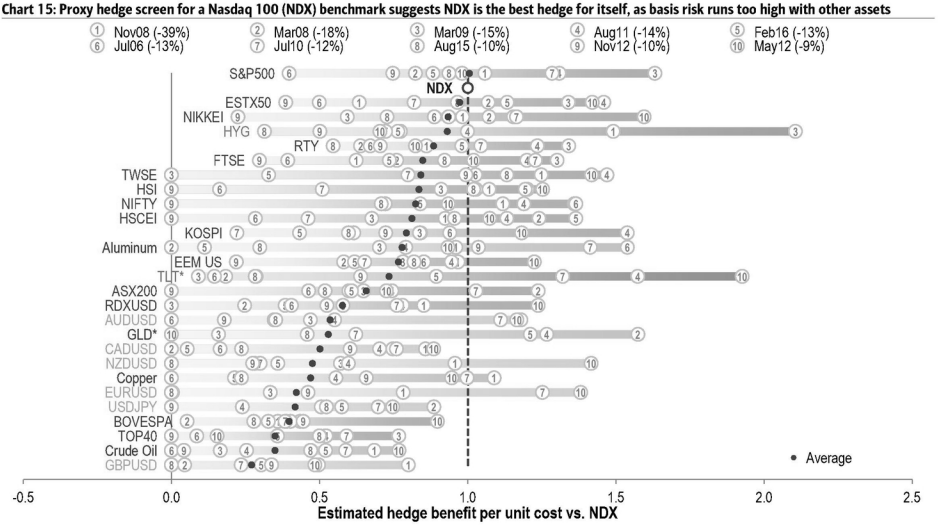


Source: BofA Merrill Lynch Global Research. Daily data from 1-Jun-09 through 2-Jun-17.

Hedge near-term reversal risk via FANG stock replacement or NDX put spreads

As we have previously noted, asset bubbles can be notoriously difficult to trade, as fundamentals give way to chasing higher highs, and derivatives can be a key tool for capturing asset price upside while mitigating reversal risk.

Chart 15: Proxy hedge screen for a Nasdaq 100 (NDX) benchmark suggests NDX is the best hedge for itself, as basis risk runs too high with other assets



Source: BofA Merrill Lynch Global Research. Data as of 2-Jun-17. *Call option volatility used.

We continue to like hedging the risk of a US Tech overshoot via stock replacement strategies, for example, stock replacing long "FANG" positions with either cheap calls on the individual FANG stocks or with outperformance calls on FANG vs. S&P.

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For those who wish to remain fully invested and/or seek broader index-level hedges for Tech positions, we suggest 3M put spreads on NDX for two reasons: (i) our cross-asset hedging analysis (Chart 15) shows little value in proxy hedging Nasdaq 100 exposure, even with relatively lower vol S&P options, as the basis risk has tended to be too high historically for proxy hedging to be reliably beneficial; and (ii) compared to outright puts, put spreads help limit long exposure to short-dated NDX implied volatility that is low but not cheap (Chart 14).

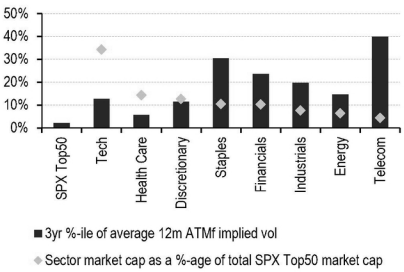
Hedge inflation & deflation of a Tech Bubble via SPX 12M Top50 dispersion

Dispersion strategies can be particularly attractive hedges for asset bubbles as idiosyncratic market moves generate high volatility (to which dispersion is positively correlated) with a limited rise in correlation (to which dispersion is negatively correlated). Importantly, as seen from Chart 11, this can occur both during the run-up to the market peak as well as after the bubble pops. In other words, long vol dispersion strategies can profit from *both* the inflation and deflation of an asset bubble, without requiring an investor to time the top.

With the SPX Top50 largely dominated by Tech stocks (34% of total market cap) and with average longer-dated single stock vol in the basket trading close to 3yr lows (12M SPX Top50 ATMf implied vol is in its 2nd %-ile since Jun-14, Chart 16), we recommend investors go long 12M SPX Top50 dispersion. Chart 18 shows that such a strategy would have recorded its best performance during the formation and subsequent bursting of the dotcom bubble as volatility increased in tandem with falling correlation (see Chart 11).

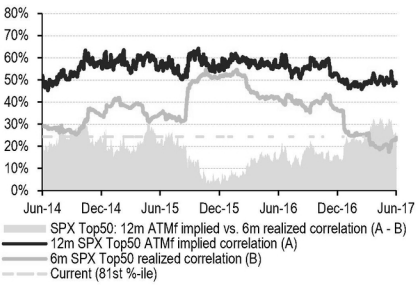
Importantly, while implied correlation continues trading in a new, lower range since the US election, the spread to realized correlation has remained healthy with the SPX Top50 12M implied vs. 6M realized correlation spread in its 81st %-ile over the past 3 years (Chart 17). This makes selling the correlation premium (inherently embedded in long dispersion strategies) attractive vs. history.

Chart 16: Average SPX Top50 single stock 12M ATMf implied vol is depressed vs. history, in part driven by Tech market cap dominating the index and Tech vol the 2nd lowest across sectors on a historical basis



Source: BofA Merrill Lynch Global Research. Daily data from 5-Jun-14 to 5-Jun-17.

Chart 17: Implied to realized correlation spread on the SPX Top50 basket is historically elevated, making selling the correlation premium embedded in long dispersion strategies attractive



Source: BofA Merrill Lynch Global Research. Daily data from 2-Jun-14 to 2-Jun-17.

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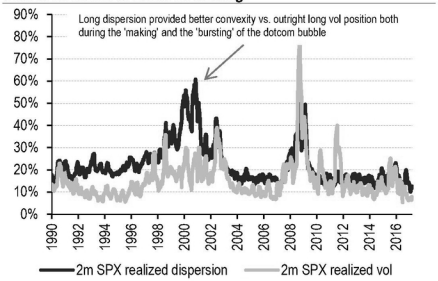
Chart 18: Long SPX Top50 dispersion strategies performed the best during the dotcom bubble era, providing adequate convexity during both its formation as well as its bursting



Source: BofA Merrill Lynch Global Research. Daily data from 14-Mar-90 to 2-Jun-17

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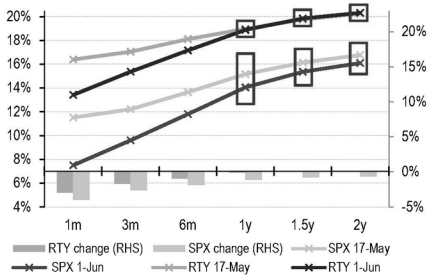
Notable trends and dislocations (US)

Major US equity indices soar to all-time highs as the low vol regime persists

Friday marked the end of the second full week following the political turmoil on Wed, 17-May. Since then, volatility has once again collapsed (10d realized is at 4.6%) and the S&P 500 term structure of volatility has steepened with the 3m-1m spread trading in the 90th 2y %-ile. Low S&P 500 short-dated vols pushed down the back end of the curve (1y and beyond), while Russell 2000 1y+ vols remained bid (Chart 19). Last week, the VIX printed 2 of its 15 closes below 10 since 1990 (Chart 20). Vol-of-vol remained supported with the VVIX/VIX ratio setting yet another record (8.58) on Friday. All of this happened as SPX, NDX and INDU finished the week at all-time highs.

Chart 19: In the trading sessions following the political turmoil and ensuing volatility spike on 17-May, long-term vols (1y and above) reset lower for SPX but remained bid for RTY



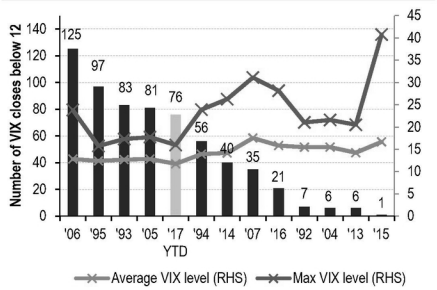
Source: BofA Merrill Lynch Global Research.

The political turmoil on 17-May caused short-term vols to reset higher and the VIX jumped to 15.59 from 10.65 the prior day. Short-term vols in turn moved the back end of the curve higher with e.g. SPX (RTY) 1y vols trading higher by 1.05% (0.79%).

However, the agitation in equity markets was short-lived. The front end of the curve collapsed over the subsequent trading sessions and resulted in a very steep term structure for both indices, similar to what we have become accustomed to over the prior months.

By the end of last week, SPX long term vols (1y and beyond) had moved to virtually the same levels where they traded prior to the vol spike. RTY long-term vols, however, remain bid.

Chart 20: 2017 is already the 5th calmest year for the VIX with 76 YTD closes below 12. Despite the short-lived vol spike on 17-May, the VIX had a very calm month of May, extending into June as it printed 6 out of its 15 historic closes below 10



Source: BofA Merrill Lynch Global Research, Bloomberg. Daily data from Jan-90 to 5-Jun-17.

With only five months of the year behind us, the VIX has already closed below 12 on 76 days. Since 1990, only 4 other years have seen a larger number of trading sessions with the VIX closing below 12.

Of the 15 trading sessions in VIX's history since 1990 when the index closed below 10, 6 were between May-17 and Jun-17. The low short-dated implied vol is in part driven by realized vol; 10d is at 4.5%, which is already subdued even for the current low-vol regime (17th %-ile since the US election last November).

HOUSE_OVERSIGHT_023583

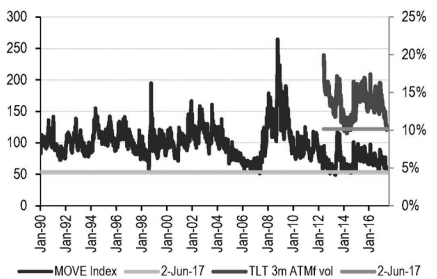
Rates vol is near all-time lows and is favorable for positioning for a break-out

Since the US Election last November, the 10y US Treasury rate has fluctuated between 2.17% and 2.63%, constantly being jostled up or down by various economic forces. It is currently trading towards the bottom of that range. Our rates strategists have a year-end target of 2.85% for the 10y rate (just above the median forecast).

Long-term rates have remained low due to uncertainty around Fiscal policy (Trump's plans on infrastructure spending), subdued inflation expectations and a slower than expected Fed hiking cycle. On the other hand, a near full-employment economy, hopes for infrastructure spending, potential for higher inflation driven by energy prices & increased government spending and an accelerated hiking cycle are providing a floor for long-term rates. In the end, uncertainty remains and analysts' estimates for the year-end target vary widely between 1.6% and 3.7% (based on 59 forecasts with median and mean of 2.8%).

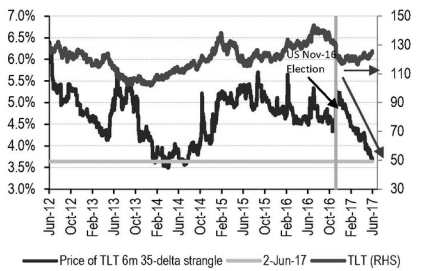
For investors who believe that long-term rates will break out of their range we recommend going long TLT 6m 35-delta strangles. The structure has rarely been cheaper in history (Chart 22) and at present TLT 6m implied vol is 94bps below 6m realized, with the spread at its lowest since Aug-15. A 3m version of the 35-delta strangle prices just as attractively versus its history.

Chart 21: Rates volatility, as measured by the Merrill Option Volatility Estimate index (MOVE) and by TLT (20+ year bond ETF) 3m ATMf vols, are the lowest they have been all year and are very near the all-time lows



Source: BofA Merrill Lynch Global Research. Daily data from Jan-90 to Jun-17 for MOVE Index and Jun-12 to Jun-17 for TLT vols.

Chart 22: With vol and skew in favor of the structure, the price of a TLT 6m 35d strangle is near all-time lows. Investors can go long the trade to position for a break-out from the range

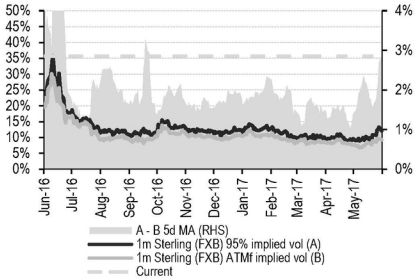


Source: BofA Merrill Lynch Global Research. Daily data from Jun-12 to Jun-17.

Bank of America Merrill Lynch

HOUSE_OVERSIGHT_023584

Chart 23: Steep put skew in FXB , the ETF underlying GBP, favors buying downside protection via cheap put spreads against the odds of a hung parliament outcome in the UK general election



Source: BofA Merrill Lynch Global Research. Daily data from 5-Jun-16 to 6-Jun-17.

The UK general election is scheduled to take place on Thu, 8-Jun-17. When the election was called on 18-April, the polls pointed to a landslide victory for the Conservative Party. This boosted the UK's currency as investors assumed that such an outcome would lead to a "smoother" Brexit. Indeed, on that day the Sterling (GBPUSD) recorded its third best daily performance over the past 8 years.

However, while official polls still suggest an outright majority for the Conservative Party, the odds of a hung parliament have increased in recent weeks. As a consequence the boost in the currency after the election was called has slightly faded. With significant further downside room to its recent pre-rally lows and FX markets complacent with prevailing opinion poll data, there clearly could be a significant near-term correction in the sterling if the probability of a hung parliament becomes reality. Hence we favor hedging downside risk in sterling via cheap FXB put spreads to lever steep put skew (3m 95%-ATMf implied vol spread at its 1-yr 90th %-ile).

Table 2: Current S&P500 volatility and correlation measures relative to the prior two year of historical daily data

	1-week change			Over 2-year historical period					
	2 Jun 17	26 May 17	Change	Current ranking	Minimum	25%	Median	75%	Maximum
1-month ATM implied volatility	7.4%	7.6%	-0.2%	0.1%	7.4%	10.0%	11.8%	14.5%	31.8%
1-year ATM implied volatility	13.8%	13.9%	-0.1%	2.5%	13.4%	15.4%	16.2%	17.3%	22.5%
1-week intraday realized volatility	6.2%	6.1%	0.1%	3.7%	5.2%	8.5%	10.7%	14.0%	53.7%
1-year minus 1-month term structure	6.3%	6.3%	0.0%	97.8%	-12.0%	2.7%	4.3%	5.4%	7.0%
3-month 90 minus 110 skew	7.9%	8.7%	-0.8%	4.7%	7.1%	9.5%	11.3%	11.8%	13.8%
1-year top 50 implied correlation	45.42	45.85	-0.44	6.7%	42.03	49.79	54.34	57.14	65.55
3-month top 50 realized correlation	27.75	30.72	-2.97	24.4%	12.57	27.90	37.28	48.45	60.41
VIX 1-month ATMf implied vol	76.5%	75.9%	0.6%	20.4%	61.2%	77.9%	85.0%	95.2%	162.2%
VIX 1-month 110 minus 90 skew	28.4%	28.5%	-0.1%	96.2%	9.3%	18.6%	21.5%	23.8%	30.3%

Source: BofA Merrill Lynch Global Research

HOUSE_OVERSIGHT_023585

Volatility in Europe

Notable trends and dislocations (Europe)

European equities were mostly flat over the week with the notable exception of the DAX which rallied 1.8% led by Bayer (which accounts for almost 10% of the index). In contrast, the Russian RDXUSD dropped by 3.3% as oil prices continued to decline. Short-dated (3M) implied vols dropped to 2y lows on the ESTX50, DAX and CAC which helped push 12M-3M volatility term-structures to 2y highs on all three indices.

- **The short 1xAug / long 2x Sep / short 1x Oct V2X futures fly** jumped to 3.7v on 31-May given speculation around early Italian elections. This is higher than equivalent V2X flies at the same number of days to both the UK referendum and the French elections. The current price is higher than 94% of the values of historical flies 1d before the expiry of the earliest leg, suggesting it has ample room to trade lower should political uncertainty abate by Aug.
- **SX5E 2Y var convexity (var strike vs ATMf vol) has been driven lower** by (A) a decline in the Tail liquidity Risk Premium and (B) volatility skew becoming more linear (i.e., less convex in strike)
- GBPUSD short-dated (1wk) implied has reached its 92nd 4yr percentile ahead of the UK snap election on 8-Jun. It is however still at least 2.7v below the levels witnessed ahead of previous well known political catalysts.
- **DTE GY has run too fast, too quick**: hedge a potential reversal using a Sep17 collar (+17put/-18 call) for 46bps to hedge losses greater than 2.9% while retaining upside to 18 (near 15yr high of 18.05) by the Sep expiry
- **Equity vs credit: Enel stock attractive vs CDS given cheap bullish risky & high div yield vs CDS:** Among 50 companies which have high dividend yields relative to bond yields (as highlighted by BofAML credit and equity strategists), we note that Enel's projected 12m div yield is higher than its CDS and the price of 3M bullish risk reversals are cheap (vs other names and vs a 5-year history).

ESTX50 Sep/Oct fwd vol rose as early Italian elections are (slightly) more likely

According to our economists, the agreement reached between major Italian parties on a German-style proportional electoral law has made early elections more likely. They note that the Italian press cite possible early election dates between 10-Sep and 22-Oct, i.e., almost entirely within the V2X Sep future's volatility bucket (which also encompasses German elections). This may in part be why the short 1xAug / long 2x Sep / short 1x Oct V2X futures fly jumped to 3.7v on 31-May, which is higher than equivalent flies ahead of both the UK referendum and recently concluded French elections (Chart 24). However, our economists view an early vote within September as technically difficult.

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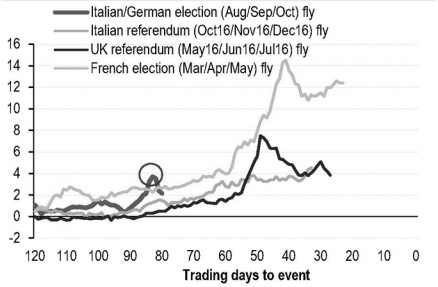
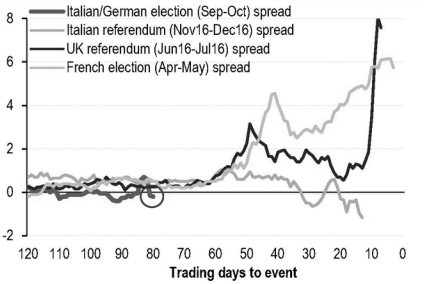
HOUSE_OVERSIGHT_023586

Chart 24: The V2X Aug17/Sep17/Oct17 futures fly reached 3.7v on 31-May. This is higher than equivalent flies at the same number of days before both the UK referendum and recently concluded French elections



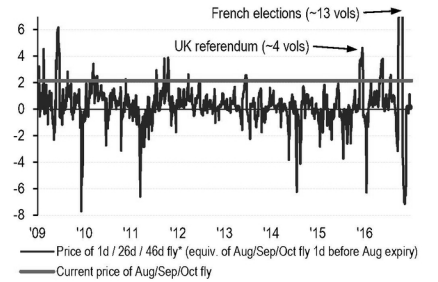
Source: BofA Merrill Lynch Global Research. Data: 8-Jan-16 to 5-Jun-17.

Chart 25: The V2X Sep17-Oct17 spread is actually significantly lower than the equivalent UK referendum and French election spreads, suggesting the majority of excess volatility is being priced in SX5E Sep/Oct fwd vol



Source: BofA Merrill Lynch Global Research. Data: 8-Jan-16 to 5-Jun-17.

Chart 26: The current price of the V2X Aug/Sep/Oct fly would have overestimated the value of a 1d/26d/46d fly (i.e., equivalent to the Aug/Sep/Oct fly 1d before the Aug expiry) 94% of the time since Jun-09

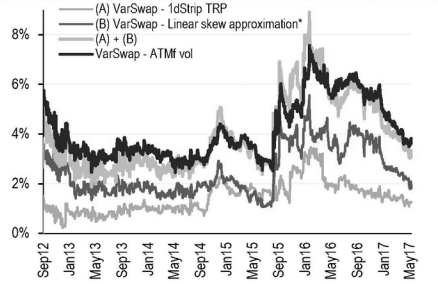


Source: BofA Merrill Lynch Global Research. Data: 2-Jun-16 to 1-Jun-17. *Using constant maturity futures.

The current price of the V2X Aug/Sep/Oct fly would have overestimated the value of a 1d/26d/46d fly (i.e., equivalent tenor to the Aug/Sep/Oct fly 1d before the Aug expiry) 94% of the time since Jun-09. This suggests it has ample room to trade lower should political uncertainty abate by Aug. However, if instead implied risk becomes more concentrated in the 20-Sep to 20-Oct period ahead of the Aug expiry (due to, say, political developments in Italy or Germany increasing risk perception), the fly would stand to gain considerably.

HOUSE_OVERSIGHT_023587

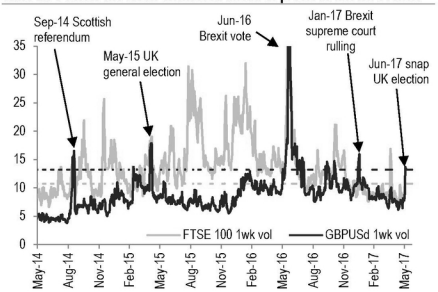
Chart 27: SX5E 2Y var convexity (var strike vs. ATMf vol) has been driven lower by (A) a decline in the Tail liquidity Risk Premium and (B) volatility skew becoming more linear (i.e., less convex in strike)



Source: BofA Merrill Lynch Global Research. Data: 21-Sep-16 to 31-May-17. *Linear approximation of variance strike = ATMf vol squared x (1 + 3 x T x skew squared), where T is time to maturity and skew = [implied vol at strike 90 – implied vol at strike 100] / [90 – 100]. For more details see Derman's 1999 paper: More than you ever wanted to know about volatility swaps.

We recently noted that ESTX50 long-dated (2Y) variance convexity (var strike vs. ATMf vol) had declined considerably in recent months. This has been driven by (A) a decline in the Tail liquidity Risk Premium (as defined in our piece More to variance swaps than meets the eye) and (B) volatility skew becoming more linear (i.e., 80-90 skew being similar to 90-100 skew). Both these components of variance convexity suggest that long-dated ESTX50 tails (e.g., VarSwaps or far OTM puts) are historically cheap vs. ATMf vol.

Chart 28: GBPUSD short-dated (1wk) implied has reached its 92nd 4yr percentile ahead of the UK snap election on 8-Jun. It is, however, still at least 2.7v below the levels witnessed ahead of previous known events.



Source: BofA Merrill Lynch Global Research. Data from 5-Jun-13 to 5-Jun-17

With the UK parliamentary elections less than one week away, short-dated (1wk) implied vols on both the FTSE and GBPUSD appear more elevated vs. history, compared to last week. GBPUSD 1wk ATM vol is exhibiting some concern as it is trading in its 92nd 4yr percentile. It is, however, still at least 2.7v lower than the same measure ahead of previous known political events. In contrast, FTSE 1wk ATMf implied vol is still well below 4yr median levels.

Deutsche Tel has run too fast too quickly; hedge using a Sep17 +17P/-18C collar

BofAML equity telecom analysts have reiterated their recommendation to be cautious on Deutsche Tel as the company may face regulatory hurdles in their T-Mobile merger. Given the stock has outperformed European telcos (SXKP) by 15.1% over the past 1 year, investors who own the stock should consider hedging downside with a long DTE GY Sep17 17 put, short DTE GY Sep17 18 call for 0.46%, in our view. Indeed, spending 0.46% to protect gains is attractive as the price of the structure has rarely been cheaper (only 14% of the time since Jun-08, Chart 29). Moreover, Chart 30 illustrates that this structure enables stock owners to protect from losses greater than 2.1% while retaining 3.6% upside potential if the stock rises to 18 (near its 15-year high) by the Sep expiry.

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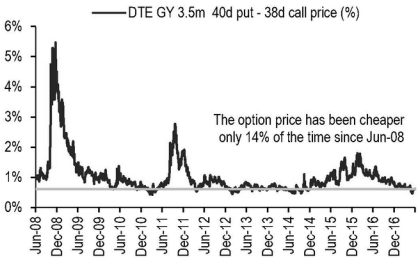
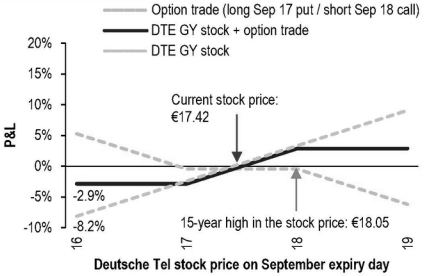
HOUSE_OVERSIGHT_023588

Chart 29: DTE GY 3.5month +40delta put /-38 delta call collars (equivalent to Sep17 +17 put /-18 call) are cheap relative to history



Source: BofA Merrill Lynch Global Research. Daily data from 2-Jun-08 to 5-Jun-17.

Chart 30: DTE collars enable stock owners to protect against losses >2.9% while retaining upside to the stock's ~15yr high (€18.05)



Source: BofA Merrill Lynch Global Research. Data as of 5-Jun-17

Enel stock attractive vs credit given cheap bullish risky & high div yield vs CDS

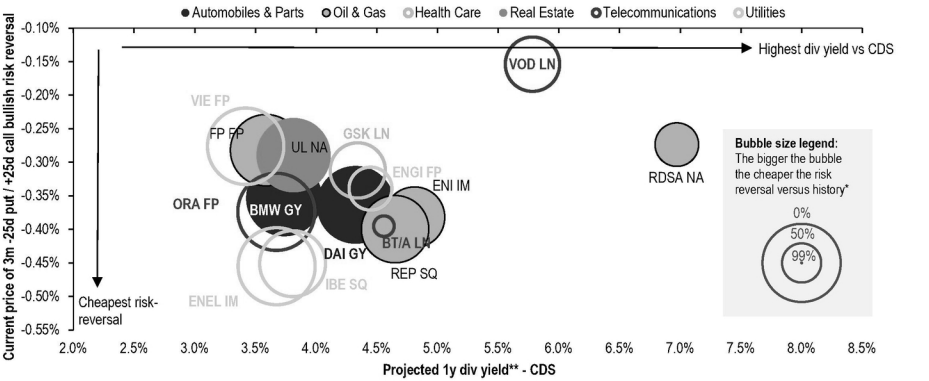
On 31-May-17, we recommended buying SX5E bullish risk reversals and selling IBOXX HY TRS as a low carry / low risk trade with gearing to improving earnings and FCF. We now look for similar opportunities at the single name level. Among the 50 companies which have high projected 12m dividend yield relative to bond yields (as highlighted by BofAML credit and equity strategists – Chart 9), we highlight a subset (15 names) where we have option data since at least Jun-12 (last 5yrs). The names in the bottom-right corner of Chart 31 indicate the cheapest 3m -25d put/+25delta call risk-reversals where projected dividend yield is highest relative to the CDS spread. We note that:

- **Royal Dutch Shell's stock yield is attractive vs CDS:** Shell's projected 12m div yield is 7.5% while its CDS is 52bps (0.5%), resulting in a div yield-CDS spread of 7.0%, the highest in our screen; this suggests value in Shell equity vs credit.

- **Cheap bullish risk reversals in Enel and Iberdrola:** 3m -25delta put/+25delta call risk reversals in Enel and Iberdrola are the lowest across the 15 names in Chart 31. Notably, bullish risk reversals in Enel are also particularly cheap versus history as the price of 3m -95%f / +105%f bullish risk reversals is below its 5th 5-y %-ile.

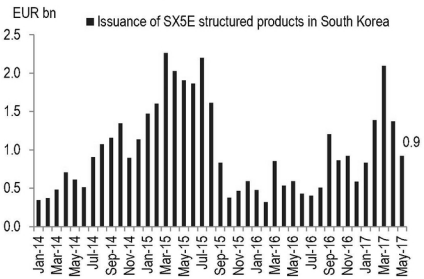
HOUSE_OVERSIGHT_023589

Chart 31: Among the 50 names highlighted by BofAML equity & credit strategists, the 15 below have liquid options. Notably, Shell equity shows best value vs CDS (highest div yield - CDS). Enel risk reversals price lowest across names & vs history *(large bubble size denotes low %-ile of risk reversal price vs 5y history)*



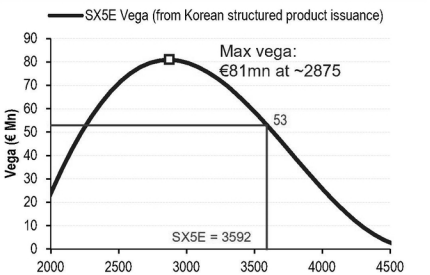
Source: BofA Merrill Lynch Global Research. Data as of 2-Jun-17. *5-yr percentile of 3m 95%f-105%f bullish risk-reversals. **Projected dividend yield = implied 12m dividends/current stock price, where implied 12m dividends are derived from mid-single stock dividend swap pricing.. This screen is not a recommended list either individually or as a group of stocks. Investors should consider the fundamentals of the companies and their own individual circumstances/objectives before making any investment decisions

Chart 32: Korean-issued SX5E-linked structured products in May17 fell to €0.9bn from €1.3bn in Apr17



Source: BofA Merrill Lynch Global Research. Monthly Korean structured product issuance data from Jan-14 to May-17

Chart 33: We estimate current vega outstanding from Korean-issued SX5E-linked structured products sums up to €53mn vega and would peak at €81mn vega should the SX5E fall to 2875 (all else equal)



Source: BofA Merrill Lynch Global Research. Data as of 2-Jun-17.

SX5E Dec18 div futures are high relative to Dec17 and BofAML div forecasts

SX5E Dec18 dividend futures are trading at €122.4 (6.8% higher than Dec17 dividend futures), which is unusually high relative to history. Indeed, Chart 34 highlights that the second DED future (currently Dec18) is at its highest level in 8 years relative to the first (currently Dec17). Moreover, Dec18 div futures are trading only 1.5% below BofAML fundamental bottom-up forecasts of 124.2 for 2018, suggesting low upside potential if BofAML forecasts materialise (Chart 35).

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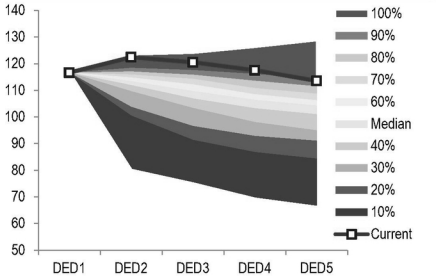
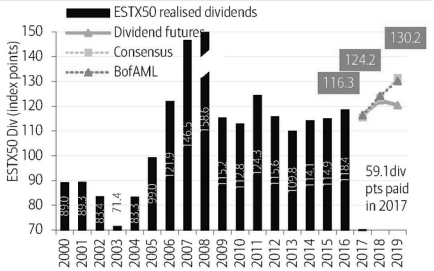
HOUSE_OVERSIGHT_023590

Chart 34: The SX5E DED2 future (currently SX5E Dec18 div future) is the highest in 9-years relative to DED1



Source: BofA Merrill Lynch Global Research. Data from 5-Jun-09 to 5-Jun-17. Historical values of DED1 are fixed at its current level of 116.6 and historical levels of DED2, DED3, DED4 and DED5 are re-scaled using historical their historical ratios to DED1 (DED2/DED1, DED3/DED1, DED4/DED1 and DED5/DED1) as a multiplying factor.

Chart 35: The DED2 div future (122.4) is not heavily discounted vs BofAML fundamental bottom-up forecasts (only 1.5% upside potential versus forecasts)



Source: BofA Merrill Lynch Global Research. Data as of 2-Jun-17

Table 3: Volatility measures of major equity indices in the EMEA region (data as of 02-Jun-17)

	3Mth ATM implied volatility			10D realised volatility			12Mth–3Mth ATM i-vol spread			3Mth 90-110 skew			Equity index
	Current	Weekly change	2Yr percentile	Current	Weekly change	2Yr percentile	Current	Weekly change	2Yr percentile	Current	Weekly change	2Yr percentile	Weekly return
ESTX50	13.0%	-0.4%	0%	6.1%	-3.9%	3%	3.6%	0.4%	100%	7.1%	-0.4%	18%	0.4%
FTSE	10.6%	0.4%	4%	4.2%	-3.6%	3%	2.8%	-0.1%	87%	5.3%	-0.4%	2%	0.0%
DAX	12.2%	-0.7%	0%	7.1%	-0.8%	8%	3.8%	0.4%	100%	7.1%	-0.6%	22%	1.8%
CAC	12.9%	-0.3%	0%	6.1%	-3.9%	3%	2.7%	0.3%	100%	7.2%	0.2%	18%	0.1%
SMI	11.5%	0.1%	4%	6.5%	-4.6%	6%	2.1%	0.0%	94%	6.2%	-0.1%	19%	0.0%
RDXUSD	24.7%	1.2%	14%	21.7%	-7.3%	35%	1.4%	-1.0%	80%	4.8%	0.1%	19%	-3.3%
TOP40	15.1%	1.0%	5%	9.3%	3.9%	9%	2.3%	-0.4%	65%	7.2%	0.5%	15%	-2.1%
ISE30	19.6%	-0.2%	1%	12.9%	0.6%	16%	3.5%	-0.1%	86%	6.7%	-0.1%	64%	1.4%

Source: BofA Merrill Lynch Global Research

European volatility: Sector snapshot

Table 4: Volatility measures and indicative option prices for major European sector indices (data as of 02-Jun-17)

					Bearish <<<< ---------- >>>> Bullish											
	3Mth ATMf implied volatility			Real vol*	3Mth 95%-85% put spread**				3Mth 100%-110% call spread**				3Mth 90%-110% risk reversal**			Equity index
	Current	Weekly change	2Yr %-ile	Current	Current price (% of spot)	Weekly change (bps)	2Yr %-ile	Max payout ratio	Current price (% of spot)	Weekly change (bps)	2Yr %-ile	Max payout ratio	Current price*** (% of spot)	Weekly change (bps)	2Yr %-ile	Weekly return
SX3P (Fd&Bv)	10.5%	-0.2%	1%	8.5%	0.6%	-3	1%	17.1	2.0%	-4	1%	4.9	-0.2%	2	85%	0.6%
SX6P (Utils)	11.7%	-0.2%	1%	10.4%	0.7%	-1	1%	13.8	2.3%	-3	2%	4.4	-0.3%	1	100%	-0.2%
SX7E (Banks)	23.0%	0.9%	3%	20.9%	1.9%	8	4%	5.3	3.6%	12	13%	2.8	-0.5%	-7	40%	-3.1%
SX7P (Banks)	19.8%	1.2%	12%	14.0%	1.6%	11	13%	6.4	3.3%	15	17%	3.0	-0.5%	-8	60%	-2.1%
SXAP (Auto)	17.3%	-0.2%	2%	13.5%	1.3%	-1	2%	7.4	3.1%	-1	2%	3.2	-0.4%	0	54%	0.9%
SXDP (Health)	13.1%	-0.6%	2%	8.6%	0.9%	-7	2%	11.5	2.4%	-14	2%	4.1	-0.2%	10	82%	1.6%
SXEP (Oil&Gas)	15.4%	-0.2%	1%	12.5%	1.2%	-1	2%	8.5	2.8%	-1	1%	3.6	-0.3%	-1	94%	-2.2%
SXIP (Insur)	15.1%	-0.3%	2%	8.6%	1.1%	-2	3%	9.0	2.8%	-3	6%	3.5	-0.5%	-3	64%	0.8%
SXKP (Telecom)	14.9%	-2.0%	1%	11.5%	1.1%	-21	1%	9.4	2.7%	-20	1%	3.7	-0.2%	2	98%	-1.0%
SXNP (Indust)	16.1%	-0.1%	6%	9.1%	1.2%	0	14%	8.3	2.8%	-1	6%	3.6	0.0%	2	100%	1.5%
SXPP (Basic)	25.1%	-0.4%	5%	18.5%	2.1%	-3	6%	4.8	3.6%	-1	9%	2.8	-0.2%	-2	58%	-1.4%
SXQP (Prsnl&HH Gds)	13.9%	3.2%	22%	6.4%	0.9%	34	21%	11.2	2.6%	53	25%	3.8	-0.5%	-24	41%	0.7%
SXRP (Retail)	12.7%	0.1%	7%	7.8%	0.8%	1	5%	13.2	2.3%	3	6%	4.4	0.1%	-3	96%	-0.4%
SXTP (Trvl&Lsre)	13.7%	-1.3%	6%	8.5%	0.9%	-18	6%	10.8	2.6%	-14	6%	3.9	-0.2%	-4	55%	1.9%

Source: BofA Merrill Lynch Global Research *Real vol = EWMA (Exponentially Weighted Moving Average) volatility, which measures historical price volatility but assigns greater importance to recent returns. Sigma(t)^2 = 0.94*Sigma(t-1)^2+(1-0.94)*r(t)^2, where r(t) is the return on day t. **Indicative mid prices; strikes as % of forward ***Negative values indicate that the bullish risk reversal takes in a credit.

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Volatility in Asia

Use best-of puts to cheaply hedge a reversal in the rally

BofAML global strategists note that the massive central bank liquidity supernova has allowed the Wall Street bull to flare higher, led by uber "growth" (EM internet stock returns annualizing 125%). In light of this, we feel that it is prudent that investors protect gains as we think today's low volatility environment remains highly fragile, characterized by the below stats:

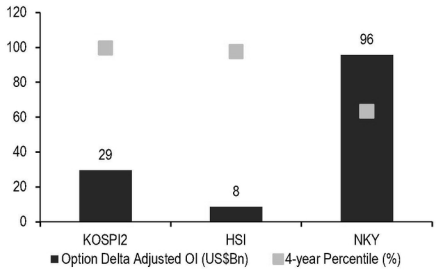
- The MSCI Asia Pac index is up for the 5th consecutive month and is trading at multi-year highs, while equity foreign inflows year-to-date are at the highest since 2004.
- Option delta-adjusted open interest for KOSPI2 and HSI are near a 4-year highs.
- The BofAML global Risk-Love investor sentiment measure is in euphoria, and China's nominal GDP is likely peaking. The Asian/EM EPS upgrade cycle is likely rolling over.

Volatility of equity indices remains at post-GFC lows while markets continue to trend higher. If the market were to realize a correction, we believe that indices would be highly correlated, and hence we recommend buying a 14-Sep-2017 95% strike best-of put on NKY/KOSPI2/HSI that costs 0.8%, a 45% discount to average vanilla puts.

Indicative pricing (As of 5-Jun-17, ref: NKY: 20170, KOSPI2: 307.33, HSI: 25874)

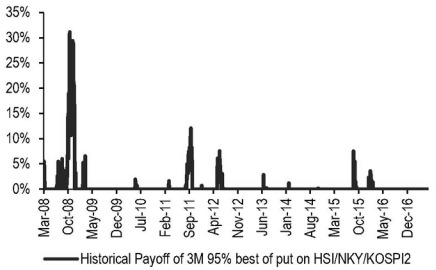
Buy a 14-Sep-2017 best-of 95% put on NKY/KOSPI2/HSI: 0.80%

Chart 36: Option positioning on KOSPI2 and HSI is near a 4-year high



Source: BofA Merrill Lynch Global Research Data as of 2-Jun-17

Chart 37: The 3-month 95% best of put on HSI/NKY/KOSPI2 has significantly paid off during market corrections when correlation rose



Source: BofA Merrill Lynch Global Research

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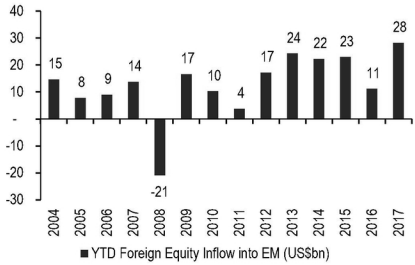
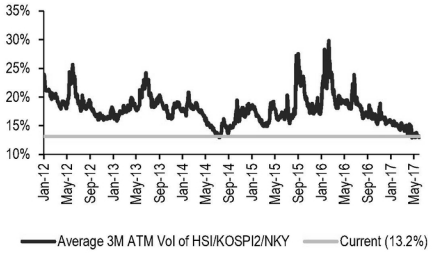
Chart 38: YTD equity inflows into EM Asia are at the highest levels since 2004



Source: BofA Merrill Lynch Global Research, Bloomberg. Data as of 2-Jun-17
Foreign inflows into Korea, Taiwan, India, Indonesia, the Philippines, and Malaysia

Chart 39: Similar to that of global markets, Asian volatility is at its most depressed levels post-GFC



Source: BofA Merrill Lynch Global Research. Data from 2-Jan-12 to 2-Jun-17

Notable trends and dislocations (Asia)

Asian equity markets saw modest gains last week, led by Japan's NKY index, which increased 2.5% week-over-week. In fact, the index breached the 20,000 mark last Friday for the first time since December 2015. Gains were driven by foreign inflows from investors attracted to very strong corporate profits. Additionally, economic data from last week indicated that Japan's unemployment rate held at a two-decade low, and capital spending during Q1 beat analyst estimates. The biggest contributor to last weeks' return was Fast Retailing Co Ltd (9983 JT), which added 3.9% week-over-week. The company reported that same-store-sales for its Uniqlo stores rose 2.4% year-over-year in May due to successful strategies during the Golden Week and Mother's Day holidays. After the NKY, last week's second biggest gainer was Hong Kong's HSI, which added 1.1%. The leading name in the index was Geely Automobile Holdings (175 HK), which jumped 19.8% week-over-week in response to optimism over its recent acquisition of a 49.9% stake in Proton Holdings. Hong Kong's HSCEI saw a similar return as the index added 0.8% last week.

Next we turn to India, where the NIFTY gained 0.6% last week. The leading name in the index was Aurobindo Pharma (ARBP IS), which increased 11.4% week-over-week in response to an investor presentation which outlined the company's plans to increase collaboration across its global customer business. Elsewhere in Asia, Korea's KOSPI increased 0.3% week-over-week, Australia's ASX added 0.6%, and Taiwan's TWSE gained 0.5%.

Asian term structures were unchanged week-over-week at 3.8% on average

- Asian 3m ATM volatility increased on average 0.1 vol point to 12.6% last week, while 10 day realized vol fell on average 0.8 vol points to 8.6%. Notably, NIFTY's implied vol increased 0.7 vol points, the biggest increase in the region. On the other hand, the HSCEI's 10d realized vol saw the largest drop in the region, falling 5.1 vol points week-over-week to 9.2%.

- On average, term structures among Asian indices remained unchanged at 3.8% last week. The KOSPI 12M-1M term structure steepened the most, increasing 0.7 vol points to 2.9%. On the other hand, India's NIFTY saw the largest flattening as its term structure flattened 0.5 vol point to 3.8%.

- Asian 3M 90-110% skews narrowed 0.2 vol points on average to 3.0%. Japan's NKY narrowed the most, decreasing 1.0 vol point to 5.0%.

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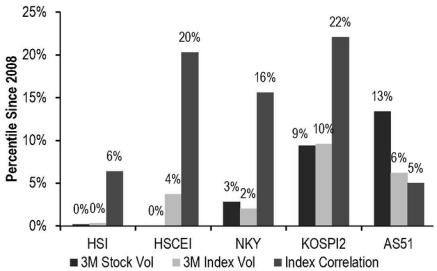
Chart 40: Volatility measures of major Asian indices (data as of 02-Jun-17)

	3Mth ATM Implied Volatility			10D Realized Volatility			12Mth-1Mth ATM Vol Spread			3Mth 90-110 Skew Spread			Equity Market
	Current	Weekly change	4Yr percentile	Current	Weekly change	4Yr percentile	Current	Weekly change	4Yr percentile	Current	Weekly change	4Yr percentile	Weekly return
HSI	12.4%	0.3%	1.4%	5.4%	-2.4%	0.3%	5.1%	0.4%	99.1%	2.3%	-0.4%	19.9%	1.1%
HSCEI	15.7%	0.3%	1.8%	9.2%	-5.1%	1.6%	4.3%	0.2%	93.6%	0.4%	0.0%	20.4%	0.8%
NKY	14.2%	-0.2%	0.3%	10.7%	1.0%	13.4%	4.2%	-0.4%	93.8%	5.0%	-1.0%	59.4%	2.5%
KOSPI 200	12.8%	-0.3%	34.5%	9.8%	2.6%	36.9%	2.9%	0.7%	44.8%	3.0%	0.2%	15.8%	0.3%
ASX 200	11.5%	-0.1%	12.8%	8.5%	-0.7%	20.5%	3.5%	0.3%	86.5%	6.3%	-0.2%	20.1%	0.6%
NIFTY	10.5%	0.7%	0.7%	9.7%	-2.2%	18.9%	3.8%	-0.5%	74.0%	5.5%	0.1%	53.0%	0.6%
TWSE	10.7%	0.3%	8.2%	7.2%	1.5%	14.1%	2.9%	-0.4%	72.6%	-1.5%	-0.1%	0.0%	0.5%

Source: BofA Merrill Lynch Global Research

Chart 41: Index correlation is generally further away from their 10-year lows while index and stock vols are near their lows, except for ASX200



Source: BofA Merrill Lynch Global Research

Except for the ASX200, Asian stock and index vols are more depressed than index correlation

Today's ultra-low Asian index realized volatility is largely driven by depressed single stock realized volatility and low realized correlation. Stock and index volatilities are generally more depressed than index correlation. For instance, the KOSPI2 3-month realized correlation (0.13) is the highest relative to its history (at its 22nd percentile since 2008) as foreign inflows have pushed the index to an all-time high and have driven correlation up. Korean market activities used to be dominated by domestic sector rotation trades.

On the other hand, ASX200 correlation is relatively depressed as the correlation between the banks and materials sectors has broken down in recent months.

US$3.6bn Korean auto-callable issuance in May-17, down 21% MoM

- Korean issuance fell 21% MoM to US$3.6bn in May-17, which is close to the average monthly issuance of US$3.8bn since 2014. Products issued in Oct-16 (US$3.1bn) and Nov-2016 (US$3.4bn) have knocked out recently and rolled into new products. However, the legacy HSCEI-linked products issued in May-15 were struck at a very high HSCEI spot level and were not able to knock-out this month. We think issuance may pick up in July and August as ~US$4.0bn of legacy products may knock-out in Jul-17 with an average HSCEI knock-out level of 9665 (Chart 43).

- Issuance in KOSPI2-linked products (up from US$840mn to US$846mn) remained steady in May-17; HSI-linked products fell 66% from US$360mn to US$120mn as investors prefered HSCEI-linked products (which only fell from US$760mn to US$700mn).

- SX5E-linked (US$1.0bn), KOSPI2-linked (US$846mn), HSCEI-linked (US$700mn), and SPX-linked products (US$550mn) accounted for 86% of the May-17 issuance. We estimate that structured product issuers are currently long US$10mn of KOSPI2 vega and US$89mn HSCEI vega respectively. The majority of the US$89mn HSCEI outstanding vega came from the US$14bn of HSCEI-linked legacy products issued between Apr-15 and Jul-15 that have not knocked-out.

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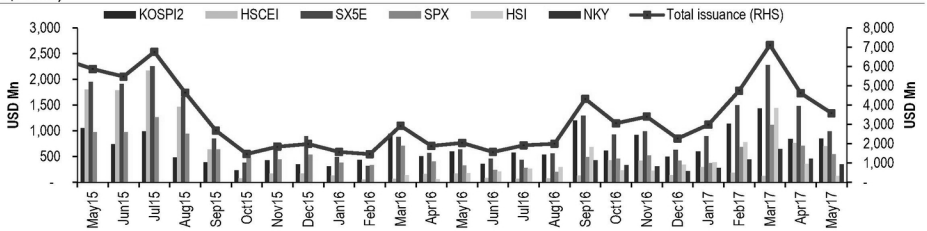
NKY Uridashi monthly issuance slightly picked-up in May-17

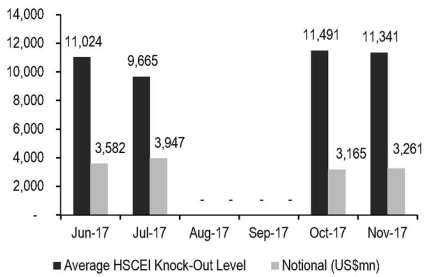
With NKY breaking above 19,500 in May and triggering some early knock-outs, Japanese Uridashi issuance picked up towards the end of May to US$630mn. We estimate there is now around US$7.9bn (vs. $8.1bn last month) in product outstanding and over 50% of it will be knocked out if the NKY rallies above 20,500. We estimate issuers are currently long US$44mn vega in NKY. The peak of the vega profile is around the 17,500 level and we expect issuers to lose US$2mn of vega for every 1% rally in the NKY.

Chart 42: Korean auto-callable issuance fell 21% to US$3.6bn in May-17; Issuance in KOSPI2-linked products (rose from US$840mn to US$846mn) remained steady; HSI-linked products fell 66% from US$360mn to US$120mn as investors prefered HSCEI-linked products (which only fell from US$760mn to US$700mn)



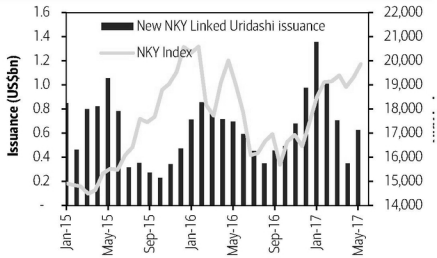
Source: BofA Merrill Lynch Global Research. From May-15 to May-17

Chart 43: Knock-out schedule for legacy HSCEI-linked products issued in 2015; we expect more knock-outs in Jul-17 if HSCEI stays above 9,600



Source: BofA Merrill Lynch Global Research. Data as of 2-Jun-17

Chart 44: In May-17, there was $630mn of Uridashi products issued which were NKY linked



Source: BofA Merrill Lynch Global Research. Monthly data from Jan-15 through May-17

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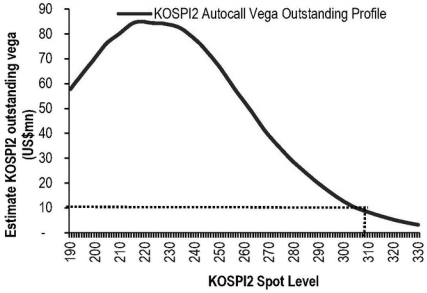
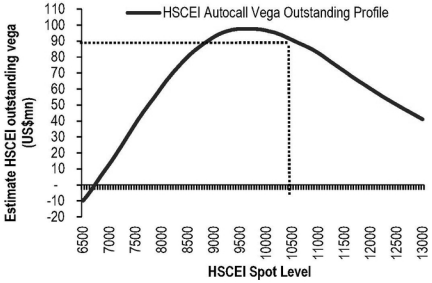
Chart 45: We estimate that structured product issuers are currently long US$10mn of KOSPI2 vega



Source: BofA Merrill Lynch Global Research.

Chart 46: Structured product issuers are currently long ~US$89mn of HSCEI vega

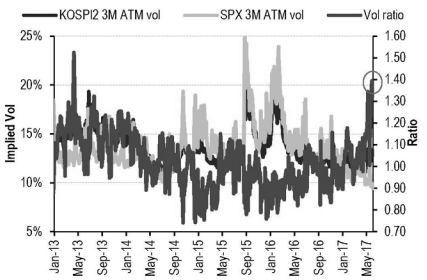


Source: BofA Merrill Lynch Global Research.

KOSPI2 3M ATM IV over SPX is at its 4-year high

Table5 lists Asian index pairs with the highest IV ratio vs their 4-year histories. For instance, the ratio of KOSPI2 3M ATM IV over SPX is at its 4-year high.

Chart 47: The ratio of KOSPI2 3M ATM IV over SPX is at its 4-yr high (Daily data from 1-Oct-12 through 02-Jun-17)



Source: BofA Merrill Lynch Global Research

Table 5: Index pairs^ with the highest implied vol ratio vs their histories (data as of 02-Jun-17)

	Index A (Implied vol)	Index B (Implied Vol)	A/B Implied Vol ratio	Ratio 4-yr percentile
3M ATM	KOSPI2 (12.8%)	SPX (9.4%)	1.36	100%
6M ATM	KOSPI2 (13.6%)	NIFTY (11.8%)	1.16	99%
12M ATM	KOSPI2 (14.8%)	NIFTY (13.8%)	1.07	99%
3M 25d-Put	KOSPI2 (13.6%)	HSCEI (16.4%)	0.83	99%
6M 25d-Put	KOSPI2 (14.7%)	NIFTY (12.5%)	1.17	99%
12M 25d-Put	KOSPI2 (16.0%)	NIFTY (14.4%)	1.11	99%
3M 25d-Call	KOSPI2 (12.6%)	SX5E (11.6%)	1.09	100%
6M 25d-Call	KOSPI2 (13.4%)	NIFTY (10.8%)	1.25	100%
12M 25d-Call	KOSPI2 (14.6%)	NIFTY (12.0%)	1.21	100%

Source: BofA Merrill Lynch Global Research

^ Index universe includes the ASX200, HSCEI, HSI, KOSPI2, NIFTY, NKY, TWSE, SPX and SX5E

* mid level implied vol

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Summary of Open Trades (5-Jun-17)

Price data for open level reflects the price on open date and does not necessarily reflect the price at which the trade could be executed at the date of this report. Our trades are structured to be executed on the open date and are not necessarily appropriate to execute as formulated beyond that date.

Table 6: Summary of open trades as of 5-Jun-17

Trade Description	Open Date	Open Level	Expected Trade Term	Rationale
Long SX5E vs short SPX Dec18 var swap	5-Jul-16	6.1 vols		Investors should re-assess attractiveness of popular and (typically) technically motivated longer-dated RV vol trades, given environment of structurally higher political & economic risks and increasingly limited policy options
Long NKY vs short SPX Dec18 var swap	5-Jul-16	5.7 vols	Dec-18 expiry	
Long SX5E vs short SPX Dec18 put vs put	5-Jul-16	0.00%		
Buy a 1Y ATM worst-of call on SPX & TLT	18-Jul-16	0.9%	1 year	Cheap equity upside in a bond / equity melt-up
Buy SPX>UKX Jun17 ATM outperformance call, conditioned on SPX lower at maturity (qUSD)	17-Oct-16	2.0%	Jun-17 expiry	Risks of a hard Brexit rising and (weak) currency tailwind likely to prove short-lived; position cheaply for FTSE 100 (UKX) underperformance
Buy UKX Jun17 6650 put, sell SPX Jun17 1850 put	17-Oct-16	2.6%	Jun-17 expiry	
Buy an EWZ Jun-17 40 call conditional on SPX<2200 at expiry	24-Oct-16	1.7%	Jun-17 expiry	Using derivatives to capture Brazil (EWZ) upside potential following start of easing cycle
Buy an SX5E Sep-17 95% put conditional on EUR 10Y CMS > 1.1% or < 0.3% in Mar-17	14-Nov-16	2.7%	Sep-17 expiry	Remain long equities and cheapen hedges by conditioning on rates
Buy 2823 HK Jun-17 90/110 strangle	21-Nov-16	5.55%	Jun-17 expiry	China risk premium rising but A-shares vol still at all-time lows
Buy ESTX50 Dec17 90% put contingent on EURGBP < 0.82 by Jun17 expiry	2-Dec-16	1.63%	Dec-17 expiry	Equity-FX correlation is not priced for a spillover of populism into the EU, which could cause EUR to fall against an already weakened GBP as equities fall
Buy SPX>UKX Jun17 5% outperformance call (qUSD)	2-Dec-16	2.05%	Jun-17 expiry	UKX is heavily exposed to EU (50% revenues) and should underperform SPX if GBP tailwind fades. Volatility & correlation suit well for outperformance
Long XLF vs SX7E Jun17 ATM outperf call, contingent on SX7E higher at Jun expiry (qEUR)	2-Dec-16	1.20%	Jun-17 expiry	Cheapen long XLF upside to near 8y lows via selling upside on structurally challenged European banks & relatively more bearish outlook for US rates vs EU
Buy SPX Jun17 95% put contingent on US 5Y CMS > 2.15	5-Dec-16	1.04%	Jun-17 expiry	Still depressed equity-bond correlation (US 5Y bonds vs. SPX in the 37th%-ile since Jun-88) cheapens the cost of SPX puts conditioned on higher rates
Buy 1x Jun-17 ATM XLF call, sell 1.8x Jun-17 ATM worst-of calls on XLP and XLU	5-Dec-16	2.10%	Jun-17 expiry	Participate in the continuation of the reflation trade. Cheapen Financials upside by selling rich Utilities and Staples vol & expensive correl.
Buy Jun-17 ATM R2K- value outperf call over EEM, contingent on EEM > 95%	5-Dec-16	2.30%	Jun-17 expiry	Higher US rates and stronger dollar are likely to hurt companies exposed to EM and help US DM. Trade the outperformance in a risk-controlled way, avoiding selling the record-low correlation
Buy NKY Jun17 110% Call	02-Dec-16	1.83%	Jun-17 expiry	USDJPY and NKY the biggest beneficiaries of a Trump win
Buy TPINSU Jun17 110-125% Call Spread	02-Dec-16	3.30%	Jun-17 expiry	Banks and Insurances are the most leveraged sector
Buy TPNBNK Jun17 110-125% Call Spread	02-Dec-16	3.20%	Jun-17 expiry	Banks and Insurances are the most leveraged sector
Buy 2823 HK Jun17 90/110% strangle	02-Dec-16	5.90%	Jun-17 expiry	China risk premium rising but A-shares vol still at all-time lows
Buy HSCEI Jun17 105-120% call spread contingent on $KRW >1200	02-Dec-16	1.20%	Jun-17 expiry	Own contrarian EM upside at low cost & limited risk
Buy NKY-SPX Dec19 70/110% corridor variance	02-Dec-16	1.50%	Dec-19 expiry	QE uncertainty and USDJPY vol support NKY vs SPX realized vol
Buy NKY Jun17-Jun18 18,500 strike FVA	02-Dec-16	21.5%	Jun-17 expiry	What if QE hits its limit? Long NKY vol outright which is cheap to carry
Long Russell 2000 vs. short S&P 500 Dec-18 var spread	5-Dec-16	3.9pts	Dec-18 expiry	With fiscal stimulus and potential tax cuts, small caps revert to old normal generating higher vol on upside and downside relative to large caps
Buy 1x Jun17 64 call on Aug17 Brent futures, sell 1x SXEP Jun17 330 call	9-Jan-17	1.00%	Jun-17 expiry	Vol and price technicals are attractive. BofAML commodity strategists oil target is $70/bbl but this is already priced in SXEP levels according to BofAML Oil & Gas equity analysts
Buy SPX 6m ATM call contingent on GLD 5% higher in 3m	23-Jan-17	1%	Jul-17 expiry	Position for a near-term wobble followed by yet another equity melt up
Long NKY - SPX Dec-18 corridor var replication	13-Feb-17	4.00%	Dec-18 expiry	Cheaply access positive carry QE failure hedge
Buy NDX Top20 volatility dispersion	27-Feb-17	17.0%	Jan-18 expiry	
Long 1.8x vega on 1y single stock vols of UK Brexit exposed names, Short 1x vega on 1y FTSE index vol	14-Mar-17	32.3vols	14-Mar-18	Position for a pick-up in single stock realised vol on the 10 names (within FTSE's top 30) where post EU referendum realised vol was the highest relative to current 1y ATMf vol. The 10 names are: Barclays, Aviva, Prudential, BT, Glencore, Tesco, CRH, BA, Standard Chartered & HSBC.
SPX Sep-17 95% puts conditional on the 5yr CMS rate above 2.4% at maturity	14-Mar-17	1%	Sep-17, expiry	Hedge portfolios against a buy-the-dip failure should a faster rate cycle ultimately jeopardize it
Buy QQQ Jun17 132 call , sell XLF Jun17 25 call	20-Mar-17	0.57%	Jun-17 expiry	Sell rich Financials vol to fund cheap Tech upside
Buy Buy-Rated MSCI A-shares stocks & hedge with puts	23-Mar-17	1.44%	Jun-17 expiry	Market may trade on the MSCI inclusion theme; Hedge with 2823 HK Jun17 95% put
Buy A-shares with highest MSCI impact & hedge with put	23-Mar-17	1.44%	Jun-17 expiry	Market may trade on the MSCI inclusion theme; Hedge with 2823 HK Jun17 95% put
Own Japan stock vol via gamma weighted vol dispersion	10-Apr-17	15.8%	Mar18 expiry	Historically attractive to own TOPIX Top 10 corridor gamma weighted volatility dispersion
Buy CNOOC Jul-17 95% puts vs. sell HSCEI 95% puts	24-Apr-17	0.77%	Jul17 expiry	Hedge a rollover in China GDP and screen for cyclicals that could face pressure
Buy CH Merchant Bk Jul-17 18.5/17 put spread vs 22 call	24-Apr-17	0.10%	Jul17 expiry	Hedge a rollover in China GDP and screen for cyclicals that could face pressure
Buy SX5E Dec17 3800 calls contingent on EURUSD > 1.1 at expiry	8-May-17	1.3%	Dec17 expiry	Benefit from low vol, flat correl, likely hawkish ECB & (FX un-hedged) inflows into EU equities
Buy 1.5x KOSPI2 285 puts vs. short 1x $KRW 1160 call	8-May-17	0.3%	Jul17 expiry	Leverage cheap equity vs. FX vols to own cheap tail protection
Buy EEM Aug17 39.5 put and sell EEM Aug17 37 put	15-May-17	1.6%	Aug17, expiry	Buy cheap EM equity puts on near-record performance gap to commodities
Buy Dec17 105% call on an equally weighted basket of SX7E, SXAP, SXPP & SXEP, sell Dec17 ATM worst-of call on the same	15-May-17	1.6%	Dec17 expiry	Monetise low vol & high implied correl to position for greater sector dispersion in EU: long basket call, short worst-of call
Buy NKY Jul-17 19500 puts vs. short Dec-17 17500 puts	15-May-17	0.0%	Jul17 expiry	Own cheap NKY hedges into FOMC; Term structure is too steep is under-pricing risks
Short GILD $55-$62.5-$67.5 put spread collar	16-May-17	1.5%	Sep-17 expiry	Buy unloved and cheap biotech upside by levering depressed vol & skew

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Table 6: Summary of open trades as of 5-Jun-17

Trade Description	Open Date	Open Level	Expected Trade Term	Rationale
Long 1x EEM 3m 97.5% put vs. short ~0.09x units each of 3m 97.5% puts on FXI, EWY, EWZ, EPI, EWT, RSX, EZA, and EWW	1.5%	0.0%	3m	Buy EEM puts financed by a basket of EM puts to lever near record low correl
Buy Tencent Jul17 250/300 strangle	22-May-17	2.45%	Jul-17 expiry	Hedge the China tech bubble; Tencent unlikely to stand still after a 45% rally YTD
Buy A-shares (2823 HK) Jul17 105% call	22-May-17	1.15%	Jul-17 expiry	Hedge the upside into MSCI announcement on 20-Jun
Buy 1x contract of ESTX50 Jun17 3525, sell 4x contracts of V2X Aug future	22-May-17	1.00%	Jun-17 expiry	Fundamental case to be long EU equities remains intact but stretched bullish positioning could lead to near-term consolidation
Buy SX5E Dec17 3450-3700 bullish risk reversal vs short IBOXX HY TRS with equal notional sizing	30-May-17	1.17%	Dec-17 expiry	BofAML Equity & Credit strategists highlight they favour equities over HY credit as div yields have surpassed HY credit yield & equities offer more gearing to rising PMI's, earnings and FCF
Buy 6m ATM calls on FB, AMZN, NFLX and GOOGL	30-May-17	6.9% (FB), 7.2% (AMZN), 9.4% (NFLX), 6.2% (GOOGL)	6m	Stock replace FANG stocks
Buy a 6m outperformance call on FANG stocks vs. SPX conditional on SPX> current levels at expiry	30-May-17	3.4%	6m	Lever extremely depressed FANG volatility and low correlation to buy upside
Buy HSI Sep17 90% put, sell ASX200 Sep-17 90% put	30-May-17	0.15%	Sep-17 expiry	HSI is unlikely to outperform if AS51 drops more than 10%; HSI vol below AS51 vol

Source: BofA Merrill Lynch Global Research. Prices reflective of most recently available data which may be delayed in some cases. "Trade Value" represents current valuation of trades initiated on the "Open Date".

HOUSE_OVERSIGHT_023598

Summary of Closed Trades (5-Jun-17)

Table 7: Summary of closed trades as of 5-Jun-17

Trade Description	Open Date	Open Level	Close Level	Close Date	Rationale
Buy NKY Aug-16 105%-110% call spreads & sell 90% puts	11-Jul-16	0.26%	1.73%	25-Jul-16	Close position as the hurdle to surprise on the upside is high following a 5.8% NKY rally
Replace FB long positions via Oct-16 ATM calls	25-Jul-16	5.9%	6.1%	1-Aug-16	Close position as Facebook rallied on better-than expected Q2 results
Replace AMZN long positions via Oct-16 ATM calls	25-Jul-16	5.5%	6.3%	1-Aug-16	Close position as Amazon rallied on better-than expected Q2 results
Buy AAPL Oct-16 ATM protective puts	25-Jul-16	4.6%	1.2%	1-Aug-16	Remove protection as worries around disappointing Q4 guidance faded post earnings
Buy 1.5x 5-Aug-16 2950-3000 strangles by selling 1x 19-Aug-16 2950-3000 strangles	25-Jul-16	0.00%	-1.12%	5-Aug-16	The BoJ, Fed & EU bank stress tests could move mkts sharply in the near term
Sell NKY Aug16 15500 puts, Buy Sep16 15500-14500 put spreads	25-Jul-16	0.24%	0.28%	Aug-16 expiry & Sep-16 expiry	Unwinding before the Aug16 expiry; The NKY Sep put spread has carried well
Buy TLS 25-Aug16 95% puts	18-Jul-16	1.05%	2.95%	15-Aug-16	Telstra has announced earnings and the stock has corrected 5% over the period
Buy Newcrest 25-Aug-16 105/115% call spreads	18-Jul-16	2.64%	1.18%	15-Aug-16	NCM has stayed unchanged over the period despite better than expected earnings
Buy CSL 25-Aug-16 95% puts	18-Jul-16	1.09%	1.18%	22-Aug-16	CSL fell 5.4% over the period with weak earnings announcement
Buy BHP 25-Aug-16 105/115% call spreads	18-Jul-16	2.22%	0.77%	22-Aug-16	BHP rose 3.6% over the period but the option remains out of the money
Buy HSCEI Aug16 9400 call, Short Oct16 10000 call	1-Aug-16	0.00%	0.67%	22-Aug-16	Close position as the HSCEI rallies 5.2% and we are approaching the Aug16 expiry
Buy Tencent (700 HK) Sep16 105% call	15-Aug-16	1.70%	2.70%	22-Aug-16	Tencent jumped post better than expected earnings
Sell 1x SX7E 1M 25d call to fully finance 1.85x SX5E 1M 25d calls	25-Jul-16	0.0%	0.0%	25-Aug-16	SX7E 1M 25d call / SX5E 1M 25d call price ratio is in the 100th 2-yr percentile
Buy CMB (3968 HK) Sep16 105-115% call spread	5-Jul-16	2.32%	6.12%	30-Aug-16	Close position and BofA ML turned neutral in EM in the short-term
Buy ICBC (1398 HK) Sep16 105-115% call spread	5-Jul-16	2.12%	9.0%	30-Aug-16	Close position and BofA ML turned neutral in EM in the short-term
Buy BOC (3988 HK) Sep16 105-115% call spread	5-Jul-16	2.10%	6.28%	30-Aug-16	Close position and BofA ML turned neutral in EM in the short-term
Buy XLF Sep 24 strike call	25-Jul-16	1.4%	2.3%	6-Sep-16	Close positions from trades that have benefited thus far from the rally in Financials and weakness in Utilities; monetize view that Fed will not hike in September
Buy XLU Sep 51 strike put	25-Jul-16	1.3%	2.6%	6-Sep-16	
Buy a 6M ATM worst-of {XLF call, XLU put}	25-Jul-16	1.35%	3.0%	6-Sep-16	
Buy 0.85x SX5E Sep16 3000-3100 strangle, sell 1x SX5E Dec16 3000-3100 strangle	15-Aug-16	-5.07%	-5.73%	Sep-16 expiry	Take advantage of low near term vol and a steep term structure
Long 0.5x V2X Oct16 future, short 0.5x V2X Jan-17 future	11-Jul-16	0.05 vols	-0.95 vols	19-Sep-16	Unwind Oct/Jan spread and maintain Nov/Jan spread given clarity around the Italian referendum date
Sell VSTOXX Sep 21 puts	30-Aug-16	1.20 vols	1.77 vols	Sep-16 expiry	Global macro event risk likely to keep V2X supported going into Sep expiry
VIX Sep 17/22 1x2 call ratios {short 2x) + 0.75x SPY Sep23 210 puts	15-Aug-16	$0.85	$0.45	Sep VIX expiry	Trade provided hedging benefits during the sudden Sep market shock & has expired
Buy NKY Oct 95/105 strangle outright	30-Aug-16	2.28%	0.44%	27-Sep-16	Take a loss post an disappointing market reaction on the BoJ announcement
Buy NKY Oct 95/105 strangle daily delta-hedging	30-Aug-16	2.28%	0.56%	27-Sep-16	Take a loss post an disappointing market reaction on the BoJ announcement
Long 3M 25d EFA put vs short 3M 25d UKX put	5-Jul-16	0.00%	0.00%	3 months	Trade expired on 3-Oct
Replace T long position via 3M ATM calls	19-Jul-16	2.72%	0.04%	3 months	Our analysts no longer expect impactful catalysts in the near term; stock replacement strategies proved useful in cushioning downside losses during the abrupt Sep-16 sell-off vs. long equity positions.
Replace LOW long position via 3M ATM calls	19-Jul-16	3.90%	0.00%	3 months	
Replace RTN long position via 3M ATM calls	19-Jul-16	3.16%	0.41%	3 months	
Replace CRM long position via 3M ATM calls	19-Jul-16	4.16%	0.19%	3 months	
Replace NEE long position via 3M ATM calls	19-Jul-16	2.32%	0.08%	3 months	
Overlay long WBA long position with 3M ATM calls	19-Jul-16	4.04%	1.20%	3 months	
Buy HKEx (388 HK) 1x2 105%-115% call ratio	15-Aug-16	0.60%	0.00%	29-Sep-16	HKEx failed to rally above the first call strike and expired worthless
Buy NKY Oct16 17500 call, Sell 0.65x NKY Sep 17250 call	8-Aug-16	0.70%	0%	14-Oct-16	NKY Oct-16 call expired out of the money
Short VIX Oct 15 put vs. long VIX Nov 19/26 call spread	1-Aug-16	$0.45	$0.88	14-Oct-16	Close position as the Oct VIX future stayed well-supported as is typically the case in the weeks leading up to the US presidential election
Long 2x SPX Oct31 2125 puts vs. short 1x SPX Mar-17 1975 put	6-Sep-16	0.0%	-0.34%	14-Oct-16	Provided hedging benefits in the sudden equity shock in early Sep-16; now being unwound to mitigate decay
DAX +2.31x Dec16 / -1x Dec17 put calendars	30-Aug16	0.00%	-2.60%	Dec-16 expiry	DAX outperformance & low short dated DAX vol make put calendars attractive
Buy SX5E Dec16 2950/2750 put spread	6-Sep-16	1.48%	0.00%	Dec-16 expiry	A catalyst-strewn fall and a remarkably low volatility summer suggests that there could be headwinds to continued market upside on low volatility
Buy 1.5x SX5E Dec16 3100 call, sell 1x SX5E Mar17 3100 call for an upfront credit of 56bps	24-Oct-16	-0.56%	1.62%	Dec-16 expiry	Monetise steep SX5E vol curve for tactical EU upside with an upfront credit
Buy a 6M ATM worst-of call on XLP & GLD	11-Jul-16	1.05%	0.0%	6 months	Take a loss as safe-haven assets post a weak performance in H2-16 with fears over Trump's surprise victory easing and stock markets rallying
Buy a 6M ATM worst-of {SPX put, GLD call}	11-Jul-16	1.60%	0.0%	6 months	
Buy GLD 124/130 Dec-16 call spread	8-Nov-16	0.9%	0.0%	Dec-16	
Buy GLD 116/124/130 Dec-16 call spread collar	8-Nov-16	0.65%	-7.4%	Dec-16	
Buy TLT 123/132/137 Dec-16 call spread collar	8-Nov-16	0.67%	-5.03%	Dec-16	
Buy Oct16 110%F calls on VIE FP, AI FP, IBE SQ, STAN LN and MUV2 GY	18-Jul-16	2.37%	3.30%	Oct-16 expiry	Add exposure via inexpensive upside on single names where positioning appears particularly bearish and stocks have underperformed vs. their sectors
Buy an Oct16 110%F call on an equally weighted basket (quanto EUR)	18-Jul-16	0.81%	0.00%	Oct-16 expiry	
Buy 0.895x V2X Oct 21 puts, sell 1x VIX Oct 16 puts	19-Sep-16	0.0	$1.3	Oct-16 expiry	Near term catalysts & curve differentials favour tactical long V2X, short VIX puts
Sell SX7E Dec16 115 call	6-Sep-16	-0.88%	-1.09%	24-Oct-16	Close short SX7E call (part of SX5E put spread, short SX7E call trade) to limit potential risk from a "Yes" in the Italian referendum

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Table 7: Summary of closed trades as of 5-Jun-17

Trade Description	Open Date	Open Level	Close Level	Close Date	Rationale
Buy HSI Oct-16 102% call, Sell HSP 105% call	19-Sep-16	0.60%	0.00%	28-Oct-16	HSP has under-performed HSI by 1.8% but both options expire out-of-the money
Short 1x USO 3M 25d put, long 2.1x SXEP 3M 25d call	8-Aug-16	0.00%	0.00%	4-Nov-16	The number of long SXEP calls per short USO put is historically high. Leverage commodity and equity strategists' views on oil and the Oil & Gas sector
Sell Dec16 SXDP 635 puts, buy 0.6x Dec16 SX7E 110 calls	7-Nov-16	0.00%	1.23%	11-Nov-16	Tactical option trade ahead of US elections
Long 0.5x V2X Nov16 future, short 0.5x V2X Jan-17 future	11-Jul-16	0.20 vols	-1.19 vols	Nov-16 expiry	Hedge further Brexit fallout, Italian bank & referendum risk.
Buy NIFTY Nov16 95/105 strangle outright	6-Sep-16	1.63%	6.36%	21-Nov-16	Close position as NIFTY has fallen 11.4% and we are approaching the expiry
Buy H-shares w/ SZ-A & buy HSCEI Dec16 put	22-Aug-16	1.90%	8.72%	5-Dec-16	Close position as the Shenzhen HK connect has launched on 5-Dec-16
Buy HK small-cap & buy HSCEI Dec16 put	22-Aug-16	1.90%	6.76%	5-Dec-16	Close position as the Shenzhen HK connect has launched on 5-Dec-16
Buy 1.32x EFA US 3M 25d put, sell 1x SX5E 3M 25d put for near 0 upfront premium	22-Aug-16	0.04%	0.00%	22-Nov-16	Own EFA puts vs ESTX50 puts to benefit from any increase in quantitative failure risk in Japan and post-Brexit uncertainty
Buy 2.6x SX5E 3M 110% call, sell 1x SX5E 3M 90% put for near 0 upfront premium	22-Aug-16	-0.04%	0.00%	22-Nov-16	Low vol, high skew combo makes ESTX50 levered riskies attractive
Sell 1M 95%f SX5E put and buy 1M 105%f SX5E call	31-Oct-16	-0.40%	0.00%	1-Dec-16	Generate income in range-bound markets, benefiting from high ESTX50 skew
Buy KOSPI2 Dec16 95% put, sell $KRW 97.4% put	17-Oct-16	0.00%	0.00%	8-Dec-16	Both legs expire out-of-the money at expiry
Buy HSCEI Dec16 95% put, sell 2822 HK 94.8% put	12-Sep-16	0.00%	0.00%	29-Dec-16	Both legs expire out-of-the money
Buy HSCEI Dec-16 105-115% call spread	27-Sep-16	1.82%	0.00%	29-Dec-16	HSCEI call spread expires out-of-the money
Buy CH Banks Dec-16 105-115% call spread	27-Sep-16	2.05%	0.00%	29-Dec-16	Chinese Banks call spread expires out-of-the money
Buy Best-of TWSE,KOSPI2,HSCEI Dec16 95% put	10-Oct-16	0.90%	0.00%	29-Dec-16	The best performing index (KOSPI2) fell less than 5% over the period
Buy HSCEI Dec16 9800 call with a 10600 knock-out	7-Nov-16	1.00%	0.00%	29-Dec-16	HSCEI knock-out call expires out-of-the money
Sell Samsung Jan17 90% put, buy KOSPI2 96% put	17-Oct-16	0.00%	0.00%	12-Jan-17	Both legs expire out-of-the money. The relative value trade has a zero profit & loss
Buy an XOP Jan-17 45 call	22-Aug-16	1.4%	0.00%	20-Jan-17	Call expired out-of-the money at expiry
Buy an XLE Jan-17 ATM call with 115% knock-in	22-Aug-16	2.5%	0.0%	20-Jan-17	Call expires in-the-money but the barrier was not breached at expiry
Buy an XLE over SPX Jan-17 ATM outperformance call contingent on SPX up at expiry	22-Aug-16	2.3%	3.4%	20-Jan-17	Energy equity outperformed the overall equity market while both were up by the time the outperformance call expired
Buy XLP Jan-17 52 / 49 put spread	19-Sep-16	1.4%	0.00%	Jan-17 expiry	Both legs expire out-of-the money
Buy a 6M ATM best-of put on SPX & TLT	18-Jul-16	0.8%	0.00%	6 months	Put expired out-of-the money as the S&P500 ended
Buy LLY Jan-17 80/90 1x2 CS	17-Oct-16	1.8%	0.00%	Jan-17 expiry	Both legs expire out-of-the money
Buy LLY Jan-17 80/85 CS with 90 KI on upper leg	17-Oct-16	2.4%	0.00%	Jan-17 expiry	Both legs expire out-of-the money
Buy ZTS Jan-17 46/50 bullish risk reversal	17-Oct-16	2.6%	7.4%	Jan-17 expiry	Both legs expire in-of-the money
Buy ZTS Jan-17 46/50/55 call spread collar	17-Oct-16	1.4%	7.4%	Jan-17 expiry	The 46 call and 50 call expire in-the-money
Buy an EWZ Jan-17 40 call	24-Oct-16	3.1%	0.00%	Jan-17 expiry	Call expired out-of-the money at expiry
Buy TPINSU 105-120% call spread, short 85% put	14-Nov-16	1.75%	4.50%	13-Jan-17	Option expired and Topix Insurance rose 9.5% over the period
Buy TPNBNK 105-120% call spread, short 85% put	14-Nov-16	1.85%	10.60%	13-Jan-17	Option expired and Topix Banks rose 15.6% over the period
Buy HSBC Jan-17 105% call, Sell HSP 105% call	14-Nov-16	0.52%	4.98%	26-Jan-17	Option expired; HSBC out-performed HSP on the upside
Buy SX5E +Dec19/-Dec18 div future spread	4-Oct-16	€-7.0	€-4.2	6-Feb-17	Close position given sudden SX5E rally and Dec18 div future will lose equity beta
Own Nifty Mar17 call to position for budget surprise	23-Jan-17	0.67%	2.15%	6-Feb-17	Nifty was up 4.9% over the period on the back of a positive budget announcement
Buy HSI Feb17 23600 call	9-Jan-17	0.48%	1.09%	13-Feb-17	Close position. HSI was up 4.9% over the period
Buy AMP AU 23-Feb-17 95% puts	30-Jan-17	1.85%	0.27%	13-Feb-17	Unwind the put option post the earnings result
Buy SUN AU 23-Feb-17 95% puts	30-Jan-17	1.39%	0.08%	13-Feb-17	Unwind the put option post the earnings result
Buy 1x V2X Feb17 19 calls, sell 0.85x V2X Mar17 futures	17-Jan-17	-16.1v	-14.32v	Feb-17 expiry	Unwind as the Feb17 call expired
Buy CBA AU 23-Feb-17 95% puts	30-Jan-17	0.76%	0.00%	21-Feb-17	Unwind the put option post the earnings result
Overwrite WES AU 23-Feb-17 103% calls	30-Jan-17	-0.87%	-1.20%	21-Feb-17	Unwind the put option post the earnings result
Long V2X Apr future, short V2X May future	9-Jan-17	0.45	4.55	24-Feb-17	The Apr future has already richened significantly vs. the May future. Prefer V2X May long May call spread, short Apr put as a French election hedge instead.
Buy 1x ESTX50 Dec17 3250 calls, sell 1.23x EURJPY Dec-17 115 puts	5-Dec-16	0.00%	3.20%	24-Feb-17	Unwind ahead of French elections as political uncertainty can weigh on the EUR
Buy NKY Dec17 19500 call, short Mar17 18000 call	3-Oct-16	0.58%	-1.82%	3-Mar-17	Unwind the option before the Mar-17 expiry
Buy NKY Mar17-Dec17 17000 strike FVA	3-Oct-16	20.2%	21.6%	3-Mar-17	Unwind the option before the Mar-17 expiry
Buy TPNBNK Mar17 1x1.5 180/170 put ratio	9-Jan-17	0.60%	0.00%	10-Mar-17	Option expired out-of-the money as the TPNBNK remained range-bounded
Buy ESTX50 17-Mar-17 3350-3450 strangle	6-Mar-17	0.80%	0.00%	17-Mar-17	Expired out-of-the-money
Buy Volkswagen 2017 dividend future	17-Jan-17	€1.3	€2.0	14-Mar-17	Volkswagen announced a dividend of €2.05 on 14-Mar-17
Buy Mar17 UKX 6700 put cont. on GBPUSD<1.20	10-Oct-16	0.81%	0.0%	17-Mar-17	
Buy Mar17 UKX<6700 / GBPUSD<1.20 dual digital	10-Oct-16	9.1%	0.0%	17-Mar-17	UKX rallied making the hedges expire out-of-the-money
Mar17 UKX 6700 buy qUSD put, sell 0.9x vanilla put	10-Oct-16	0.44%	0.0%	17-Mar-17	
Buy 6M ATM worst-of {XLF call, XLU put}	19-Sep-16	1.38%	0%	17-Mar-17	While XLF has rallied ~30% since inception, XLU is higher by 4% and the XLU put is the worst performing option, expiring OTM
Buy an SPX Mar-17 97.5% put contingent on USO>105% at expiry	3-Oct-16	1.08%	0%	17-Mar-17	The structure offered a deep discount for an SPX hedge and expires OTM as markets have rallied strongly
Buy a USO Mar-17 105% call contingent on SPX<97.5% at expiry	3-Oct-16	1.70%	0%	17-Mar-17	The trade expires OTM due to the SPX rally and a sell off in oil over the past two weeks
Buy a Mar-17 SPX<97.5%, USO>105% dual digital	3-Oct-16	11.80%	0%	17-Mar-17	The trade expires OTM due to the SPX rally and a sell off in oil over the past two weeks
Buy an IWM Mar-17 ATM call conditional on EEM<95% at expiry	14-Nov-17	1.15%	0%	17-Mar-17	EEM has rallied 15% over the period together with IWM
Buy an XLI Mar-17 ATM call conditional on EEM<95% at expiry	14-Nov-17	0.89%	0%	17-Mar-17	EEM has rallied 15% over the period together with XLI
Buy GLD Mar-17 116 call, sell Jun-17 127 call	23-Jan-17	1%	0.31%	17-Mar-17	While GLD rallied strongly earlier in the life of the trade, it recently retreated at the time of expiry with GLD 87bps above the lower strike, the short call is worth 56bps

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HOUSE_OVERSIGHT_023600

Table 7: Summary of closed trades as of 5-Jun-17

Trade Description	Open Date	Open Level	Close Level	Close Date	Rationale
Long 2x SPX Aug-17 2200 puts, short 1x SPX Aug-17 2350 put	21-Feb-17	0.10%	0.01%	17-Mar-17	SPX has traded range bound since inception of the trade, still the carry has been minimal, close out or roll the position
Own Nifty Mar17 strangle heading into 5 events	23-Jan-17	1.50%	3.96%	20-Mar-17	Unwind the option post the state election event and Close position
Long XLF Jun17 24 call, short SX7E Jun17 120 call	2-Dec-16	0.74%	-5.88%	27-Mar-17	The call vs call relative value trade is now riskier given the potential reversal in US reflation trades and the potential for European equities to rally in a French election market-favourable outcome. Unwind the position for the Tencent earnings
Buy Tencent Mar-17 105% calls	27-Feb-17	1.15%	2.31%	27-Mar-17	
Buy HSCEI Mar17 105% call contingent SPX <2200	24-Oct-16	1.20%	0.00%	30-Mar-17	Option expired; HSCEI was up 5.1% but the SPX ended above 2200
Buy HSCEI Mar17 9600 put vs short Sep17 8200 put	17-Jan-17	-0.05%	-0.78%	30-Mar-17	Unwind post Mar-17 expiry; the short Sep17 put helped reduce the hedging cost
Buy HSCEI Mar-17 1x1.5 10800-11200 call ratio	21-Feb-17	0.57%	0.00%	30-Mar-17	Option expired; HSCEI stayed flat and failed to rally above the 10800 call strike
Long SX5E Apr17 3300 call, short SX5E Dec17 3450 call	30-Jan-17	-0.60%	-0.18%	21-Apr-17	Apr17 option expired so we unwind the entire trade as planned
Short 1x SX5E May17 3350 calls, long 2x SX5E May17 3450 calls	21-Feb-17	0.00%	0.60%	24-Apr-17	Unwind before May expiry following the large 4% SX5E move on 24-Apr, given lack of near term catalysts
Buy an SPX Apr-17 95% put conditional on US 10Y CMS > 2.5% at maturity	14-Nov-16	0.78%	0%	21-Apr-17	In Nov-16, we recommended remaining long equities with cheap hedges. The hedge expires out of the money, while SPX has returned 8.7% for the period
Long SPX Apr17 2300 call, short SPX Dec17 2400 call	30-Jan-17	-0.80%	-0.71%	21-Apr-17	The reflation trade has slowed down and the market is in a holding pattern. The long Apr-17 call expires in-the-money, and the short Dec-17 call still has time value
Long VIX May 16 / 22 call spread vs. short VIX Apr 13 put	21-Feb-17	$0.35	$0.75	19-Apr-17	The call spread still has value due to elevated vol and vol-of-vol and we collect the premium on the expired short OTM put
Short SPX 21-Apr-17 vs. long 28-Apr-17 2325 straddle pair	6-Mar-17	0.50%	1.06%	21-Apr-17	The trade benefited from the rise in post-event volatility relative to pre-event volatility
Buy SX5E 28-Apr-17 3600 call	3-Apr-17	0.26%	0%	28-Apr-17	The option expired
Buy Unicom Apr17 105-115% call spread	21-Feb-17	1.65%	4.25%	27-Apr-17	Single stock option expired in-the-money despite a 1.4% decline in the HSCEI
Buy Sands China Apr17 105-115% call spread	21-Feb-17	2.00%	6.97%	27-Apr-17	Single stock option expired in-the-money despite a 1.4% decline in the HSCEI
Buy Galaxy Apr17 105-115% call spread	21-Feb-17	2.10%	10.0%	27-Apr-17	Single stock option expired in-the-money despite a 1.4% decline in the HSCEI
Buy SX5E Dec19 2500 put, sell SX5E Dec18 2500 put	27-Sep-16	3.97%	1.9%	8-May-17	SX5E has rallied 23.3% since we entered the trade and European political risk abated for now
Buy KOSPI2 May17 103% calls	13-Mar-17	0.63%	5.37%	8-May-17	Option expired; KOSPI2 rallied 8.37% over the period
Buy KOSPI2 May17 97/103% strangle	13-Mar-17	1.38%	5.37%	8-May-17	Option expired; KOSPI2 rallied 8.37% over the period
Buy NKY Jun17 20750 call, sell 1-1.3x 18750-17750 put ratio	06-Mar-17	0.00%	0.00%	15-May-17	Closing the trade post French election; option strikes remain far from the spot level
Long V2X May 26-32.5 call spread and short Apr 22 put	21-Feb-17	€0.20	€0.00	19-May-17	Expired
Buy 1x contract of SX5E May17 3550 call, sell 5x contracts of V2X May17 16 puts	3-Apr-17	0.0%	-1.63%	19-May-17	Expired
Long GLD May 123 call vs. short May 130 call	21-Feb-17	0.8%	0.00%	19-May-17	The hedge expired out-of-the-money as S&P 500 remained supported
Buy 1.5x EFA Jun17 103% call, sell 1x EFA May17 ATM call	6-Mar-17	-0.15%	-0.20%	19-May-17	EFA rallied strongly leading into the second round of the French elections but subsequently stalled
Buy SPX Top50 volatility dispersion	27-Feb-16	14.7%	11.5%	30-May-17	Expired
Long HSI vs. SPX May-17 90% put switch	06-Feb-17	0.07%	0.00%	29-May-17	Option expired; Both HSI and SPX puts expire out-of-the-money
Buy the Nifty May17 95/105% strangle outright	20-Mar-17	1.20%	0.00%	25-May-17	Option expired; Nifty failed to move more than the straddle huddle (5%)
Long HSBC May-17 65/70 call spread	3-Apr-17	0.95%	4.33%	29-May-17	Option expired; HSBC is up 6.75% on the back of a strong seasonal rally

Source: BofA Merrill Lynch Global Research. Prices reflective of most recently available data which may be delayed in some cases. "Trade Value" represents current valuation of trades initiated on the "Open Date".

HOUSE_OVERSIGHT_023601

Volatility in Numbers (02-Jun-17)

Table 8: Statistics on implied, realised, skew and term structure for 3-month and 12-month vols (developed markets)

	3-month							12-month						
	S&P500	ESTX50	FTSE	DAX	NKY	HSI	KOSPI	S&P500	ESTX50	FTSE	DAX	NKY	HSI	KOSPI
Implied	9.5%	13.0%	10.6%	12.2%	14.2%	12.4%	12.8%	13.8%	16.5%	13.4%	16.1%	17.3%	15.9%	14.8%
%tile (2yr)	0.2%	0.0%	3.8%	0.0%	0.8%	2.6%	37.9%	2.6%	2.9%	5.7%	0.8%	3.9%	6.3%	32.4%
1Week Change	-0.1%	-0.4%	0.4%	-0.7%	-0.2%	0.3%	-0.3%	-0.1%	0.1%	0.3%	-0.3%	0.0%	0.2%	0.1%
1Mth Change	-0.6%	-1.4%	0.1%	-1.3%	-0.7%	0.0%	0.9%	0.3%	0.0%	0.5%	-0.4%	-0.2%	0.7%	1.6%
Realised	7.3%	11.1%	9.1%	10.0%	12.5%	10.3%	11.0%	9.6%	16.8%	12.7%	15.8%	19.8%	13.7%	11.5%
%tile (2yr)	13.9%	11.8%	10.3%	1.0%	2.4%	0.6%	24.3%	1.6%	0.0%	0.0%	0.2%	14.7%	0.2%	24.5%
1Week Change	-0.4%	-0.7%	-0.6%	-0.7%	0.1%	-0.2%	0.1%	0.0%	-0.3%	0.0%	-0.1%	0.0%	-0.1%	0.0%
1Mth Change	0.4%	-0.7%	-0.2%	-1.4%	-0.4%	-0.4%	2.4%	-0.2%	-0.7%	-0.3%	-0.5%	-0.6%	-0.4%	0.4%
Imp-real spread	2.3%	1.9%	1.4%	2.3%	1.7%	2.2%	1.8%	4.1%	-0.2%	0.8%	0.3%	-2.5%	2.2%	3.3%
Spread %tile (2yr)	51.4%	53.4%	61.9%	63.3%	67.8%	69.9%	64.4%	81.5%	79.8%	73.3%	79.6%	61.2%	88.0%	72.9%
1Week Change	0.3%	0.3%	1.0%	0.0%	-0.3%	0.5%	-0.4%	-0.2%	0.3%	0.3%	-0.2%	0.0%	0.3%	0.1%
1Mth Change	-1.0%	-0.6%	0.3%	0.1%	-0.4%	0.4%	-1.4%	0.5%	0.6%	0.9%	0.1%	0.4%	1.1%	1.2%
90-110 skew	7.9%	7.1%	5.3%	7.1%	5.0%	2.3%	3.0%							
%tile (2yr)	4.6%	16.9%	1.1%	21.5%	19.0%	6.5%	2.7%							
1Week Change	-0.9%	-0.4%	-0.4%	-0.6%	-1.0%	-0.4%	0.2%							
1Mth Change	0.3%	0.8%	-1.5%	-0.4%	-0.4%	-0.7%	-1.4%							
	10-day realised							**12M - 3M term vol spread**						
	S&P500	ESTX50	FTSE	DAX	NKY	HSI	KOSPI	S&P500	ESTX50	FTSE	DAX	NKY	HSI	KOSPI
Current Level	6.6%	5.8%	4.6%	7.1%	11.1%	7.1%	10.6%	4.2%	3.6%	2.8%	3.8%	3.2%	3.5%	2.0%
%tile (2yr)	21.8%	2.1%	0.6%	6.7%	16.3%	0.4%	46.2%	99.6%	100.0%	86.2%	100.0%	99.6%	98.9%	53.1%
1Week Change	-4.3%	-4.1%	-3.2%	-0.6%	1.9%	-0.9%	2.4%	0.0%	0.4%	-0.1%	0.4%	0.2%	-0.1%	0.4%
1Mth Change	-1.0%	-14.4%	-12.7%	-10.5%	-1.4%	-4.8%	0.3%	0.9%	1.3%	0.4%	0.9%	0.5%	0.7%	0.6%
	Cash index													
Current Level	2,439.07	3,591.82	7,547.63	12,822.94	20,177.28	25,924.05	307.83							
1Wk Change	0.96%	0.36%	0.00%	1.75%	2.49%	1.11%	0.28%							
1Mth Change	2.00%	0.38%	4.10%	2.52%	3.76%	4.97%	6.28%							

Source: BofA Merrill Lynch Global Research

Table 9: Statistics on implied, realised, skew and term structure for 3-month and 12-month vols (emerging markets)

	3-month				12-month			
	EEM US	IBOV	RDXUSD	TOP40	EEM US	IBOV	RDXUSD	TOP40
Implied	15.4%	25.3%	24.7%	15.1%	19.0%	24.4%	26.1%	17.4%
%tile (2yr)	4.0%	52.5%	13.4%	4.2%	6.9%	41.4%	12.1%	1.4%
1Wk Change	-0.1%	0.5%	1.2%	1.0%	0.3%	0.6%	0.2%	0.6%
1Mth Change	0.8%	4.5%	1.0%	0.2%	1.6%	1.6%	0.3%	-0.6%
Realised	13.3%	26.3%	21.8%	10.9%	18.0%	22.9%	21.4%	14.9%
%tile (2yr)	8.1%	70.1%	31.4%	1.0%	13.3%	9.7%	2.0%	0.6%
1Wk Change	-0.8%	-0.2%	0.0%	0.1%	0.0%	0.1%	0.0%	0.0%
1Mth Change	0.8%	7.6%	2.1%	-1.2%	-0.3%	1.6%	0.0%	-0.4%
Imp-real spread	2.2%	-1.0%	2.9%	4.2%	1.1%	1.5%	4.7%	2.5%
Spread %tile (2yr)	65.3%	24.4%	37.2%	76.4%	58.9%	67.9%	96.4%	44.1%
1Wk Change	0.6%	0.8%	1.2%	0.9%	0.3%	0.5%	0.2%	0.6%
1Mth Change	0.1%	-3.0%	-1.1%	1.4%	1.9%	0.0%	0.3%	-0.2%
90-110 skew	6.0%	4.9%	4.8%	7.2%				
%tile (2yr)	1.1%	28.7%	18.8%	14.6%				
1Wk Change	-0.5%	0.5%	0.1%	0.5%				
1Mth Change	-0.4%	-0.9%	0.4%	0.7%				
	10-day realised				**12M - 3M term vol spread**			
	EEM US	IBOV	RDXUSD	TOP40	EEM US	IBOV	RDXUSD	TOP40
Current Level	13.1%	17.7%	21.2%	10.0%	3.6%	-0.9%	1.4%	2.3%
%tile (2yr)	23.0%	24.4%	31.8%	9.8%	98.7%	24.7%	79.9%	64.8%
1Wk Change	-4.1%	-32.0%	-6.4%	5.0%	0.5%	0.0%	-1.0%	-0.4%
1Mth Change	1.2%	-1.9%	8.2%	-3.2%	0.7%	-2.9%	-0.8%	-0.8%
	Cash index							
Current Level	41.76	62,510.70	1,189.17	46,522.53				
1Wk Change	0.05%	-2.46%	-3.33%	-2.13%				
1Mth Change	2.91%	-6.31%	-6.17%	-1.31%				

Source: BofA Merrill Lynch Global Research

Bank of America Merrill Lynch

HOUSE_OVERSIGHT_023602

Options Risk Statement

Potential Risk at Expiry & Options Limited Duration Risk

Unlike owning or shorting a stock, employing any listed options strategy is by definition governed by a finite duration. The most severe risks associated with general options trading are total loss of capital invested and delivery/assignment risk, all of which can occur in a short period.

Investor suitability

The use of standardized options and other related derivatives instruments are considered unsuitable for many investors. Investors considering such strategies are encouraged to become familiar with the "Characteristics and Risks of Standardized Options" (an OCC authored white paper on options risks). U.S. investors should consult with a FINRA Registered Options Principal. For detailed information regarding the risks involved with investing in listed options:
http://www.theocc.com/about/publications/character-risks.jsp

Price objective basis & risk

Deutsche Telekom (DTEGF / DTEGY, B-2-7, EUR17.42/US$19.45)
Our price objective for DT is EUR18.0/sh (US$19.62) and is derived from our Sum-of-the-Parts analysis.

Each business is valued via DCF (except MtM for TMUS and OTE) using a 7.0% WACC and 1.00% terminal growth rate for Domestic and Western Europe assets (and 8.0% WACC/1% term growth for Eastern Europe assets) and cross-checked using implied valuation multiple analysis.

Our Domestic business valuation reflects DT's solid positioning in both fixed (FTTC rollout) and mobile (superior network quality, integrated business model).

Upside risks to our PO are any asset sales (US, non-integrated assets in Austria or NL) and revenue upside from T-Home's TV push.

Downside risks to our PO are higher than expected mobile impact coming from new Drillisch tariffs or failure to turnaround good US operational trends into more profitable revenue streams.

Analyst Certification

We, Benjamin Bowler, Clovis Couasnon and Frederic Boulan, CFA, hereby certify that the views each of us has expressed in this research report accurately reflect each of our respective personal views about the subject securities and issuers. We also certify that no part of our respective compensation was, is, or will be, directly or indirectly, related to the specific recommendations or view expressed in this research report.

Special Disclosures

BofA Merrill Lynch is currently acting as Financial Advisor to Royal Dutch Shell PLC in connection with its proposed sale of its UK North Sea assets to Chrysaor LTD, which was announced on January 31, 2017.

HOUSE_OVERSIGHT_023603

EMEA - Telecoms Coverage Cluster

Investment rating	Company	BofA Merrill Lynch ticker	Bloomberg symbol	Analyst
BUY				
	BT	BT	BT US	Sunil P. Patel
	BT	BTGOF	BT/A LN	Sunil P. Patel
	DNA Oyj	XDNAF	DNA FH	Sunil P. Patel
	Iliad	ILIAF	ILD FP	Frederic Boulan, CFA
	Inwit	XISWF	INW IM	Parin Shah, CFA
	KPN	KKPNF	KPN NA	Frederic Boulan, CFA
	Orange	FNCTF	ORA FP	Frederic Boulan, CFA
	Orange	ORAN	ORAN US	Frederic Boulan, CFA
	TDC A/S	TDCAF	TDC DC	Sunil P. Patel
	Tele Columbus	XBTLF	TC1 GR	Sunil P. Patel
	Telecom Italia -RSP	TIAJF	TITR IM	David Wright
	Telecom Italia SPA	TI	TI US	David Wright
	Telecom Italia SPA	TIAOF	TIT IM	David Wright
	Telefonica SA	TEFOF	TEF SM	David Wright
	Telefonica SA	TEF	TEF US	David Wright
	Telenet Group Holding NV	TLGHF	TNET BB	David Wright
	Telenor	TELNF	TEL NO	Sunil P. Patel
	Telenor	TELNY	TELNY US	Sunil P. Patel
NEUTRAL				
	Bouygues	BOUYF	EN FP	Frederic Boulan, CFA
	Deutsche Telekom	DTEGY	DTEGY US	Frederic Boulan, CFA
	Deutsche Telekom	DTEGF	DTE GR	Frederic Boulan, CFA
	Liberty Global	LBTYA	LBTYA US	David Wright
	Orange Belgium	MBSRF	OBEL BB	David Wright
	SFR Group SA	NUMCF	SFR FP	Frederic Boulan, CFA
	Swisscom	SWZCF	SCMN VX	Frederic Boulan, CFA
	Swisscom	SCMWY	SCMWY US	Frederic Boulan, CFA
	Telia Company	TLSNF	TELIA SS	Sunil P. Patel
	Vodafone Group	VOD	VOD US	David Wright
	Vodafone Group	VODPF	VOD LN	David Wright
UNDERPERFORM				
	Cellnex	XWHXF	CLNX SM	Parin Shah, CFA
	Ei Towers	EITOF	EIT IM	Parin Shah, CFA
	Elisa	ELMUF	ELISA FH	Sunil P. Patel
	Proximus	BGAOF	PROX BB	David Wright
	RAI Way	XRWSF	RWAY IM	Parin Shah, CFA
	TalkTalk	TLKTF	TALK LN	Sunil P. Patel
	Tele2 AB	TLTZF	TEL2B SS	Sunil P. Patel
	Telefonica Deutschland	TELDF	O2D GR	Frederic Boulan, CFA
RSTR				
	Altice NV -A	ALLVF	ATC NA	Frederic Boulan, CFA
	Altice NV -B	ALVVF	ATCB NA	Frederic Boulan, CFA
	Drillisch AG	DRHKF	DRI GY	Frederic Boulan, CFA
RVW				
	United Internet AG	UDIRF	UTDI GY	Frederic Boulan, CFA

Bank of America Merrill Lynch

HOUSE_OVERSIGHT_023604

EMEA - Utilities Coverage Cluster

Investment rating	Company	BofA Merrill Lynch ticker	Bloomberg symbol	Analyst
BUY				
	EDF	ECIFF	EDF FP	Peter Bisztyga
	EDP	EDPFY	EDPFY US	Harry Wyburd
	EDP	ELCPF	EDP PL	Harry Wyburd
	EDP Renovaveis	EDRVF	EDPR PL	Pinaki Das
	Enel	ESOCF	ENEL IM	Harry Wyburd
	Engie	ENGQF	ENGI FP	Peter Bisztyga
	Gamesa	GCTAF	GAM SM	Pinaki Das
	Iberdrola	IBDSF	IBE SM	Peter Bisztyga
	innogy	XISAF	IGY GR	Peter Bisztyga
	National Grid	NGGTF	NG/ LN	Fraser McLaren
	National Grid	NGG	NGG US	Fraser McLaren
	Red Electrica	RDEIF	REE SM	Harry Wyburd
	Saeta Yield	XSTAF	SAY SM	Pinaki Das
	Senvion SA	XSHVF	SEN GR	Pinaki Das
	Suez	SZEVF	SEV FP	Pinaki Das
	Terna	TERRF	TRN IM	Harry Wyburd
	Veolia	VEOEF	VIE FP	Pinaki Das
	Veolia	VEOEY	VEOEY US	Pinaki Das
	Vestas	VWSYF	VWS DC	Pinaki Das
NEUTRAL				
	Acciona	ACXIF	ANA SM	Pinaki Das
	Drax Group Ltd	DRXGF	DRX LN	Fraser McLaren
	E.ON	ENAKF	EOAN GR	Peter Bisztyga
	E.ON	EONGY	EONGY US	Peter Bisztyga
	Gas Natural Fenosa	GASNF	GAS SM	Harry Wyburd
	Italgas	XXYZF	IG IM	Harry Wyburd
	Nordex	NRDXF	NDX1 GR	Pinaki Das
	RWE	RWNFF	RWE GR	Peter Bisztyga
	RWE	RWEOY	RWEOY US	Peter Bisztyga
	SSE	SSEZF	SSE LN	Fraser McLaren
	SSE	SSEZY	SSEZY US	Fraser McLaren
	Uniper	XUIKF	UN01 GY	Peter Bisztyga
UNDERPERFORM				
	Centrica	CPYYF	CNA LN	Fraser McLaren
	Centrica	CPYYY	CPYYY US	Fraser McLaren
	DONG Energy	XDJBF	DENERG DC	Pinaki Das
	Enagas	ENGGF	ENG SM	Harry Wyburd
	Endesa	ELEZF	ELE SM	Harry Wyburd
	Fortum	FOJCF	FORTUM FH	Peter Bisztyga
	Pennon	PEGRF	PNN LN	Fraser McLaren
	Severn Trent	SVTRF	SVT LN	Fraser McLaren
	Snam	SNMRF	SRG IM	Harry Wyburd
	United Utilities	UUGWF	UU/ LN	Fraser McLaren
RSTR				
	Abengoa B	AGOAF	ABG/P SM	Pinaki Das

HOUSE_OVERSIGHT_023605

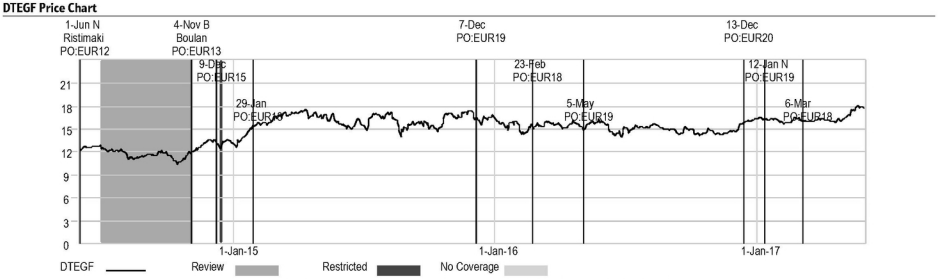
EMEA - Integrated & Refiners Coverage Cluster

Investment rating	Company	BofA Merrill Lynch ticker	Bloomberg symbol	Analyst
BUY				
	Eni	E	E US	Hamish Clegg
	Eni	EIPAF	ENI IM	Hamish Clegg
	Galp Energia	GLPEF	GALP PL	Hamish Clegg
	Royal Dutch Shell B	RDSB	RDS/B US	Christopher Kuplent
	Royal Dutch Shell B	RYDBF	RDSB LN	Christopher Kuplent
	Royal Dutch Shell PLC Shs A	RDSA	RDS/A US	Christopher Kuplent
	Royal Dutch Shell PLC Shs A	RYDAF	RDSA LN	Christopher Kuplent
	Statoil	STOHF	STL NO	Hamish Clegg
	Statoil	STO	STO US	Hamish Clegg
NEUTRAL				
	BP plc	BP	BP US	Christopher Kuplent
	BP plc	BPAQF	BP/ LN	Christopher Kuplent
	Repsol	REPYY	REPYY US	Hamish Clegg
	Repsol	REPYF	REP SM	Hamish Clegg
	Total	TTFNF	FP FP	Christopher Kuplent
	Total	TOT	TOT US	Christopher Kuplent
UNDERPERFORM				
	Neste	NTOIF	NESTE FH	Georgia Harris
	OMV	OMVJF	OMV AV	Hamish Clegg
	OMV	OMVKY	OMVKY US	Hamish Clegg

Disclosures

Important Disclosures

DTEGF Price Chart



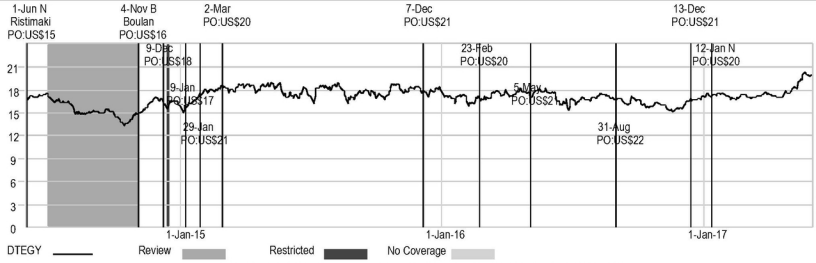
B: Buy, N: Neutral, U: Underperform, PO: Price Objective, NA: No longer valid, NR: No Rating

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark grey shading indicates the security is restricted with the opinion suspended. Medium grey shading indicates the security is under review with the opinion withdrawn. Light grey shading indicates the security is not covered. Chart is current as of May 31, 2017 or such later date as indicated.

Bank of America Merrill Lynch

HOUSE_OVERSIGHT_023606

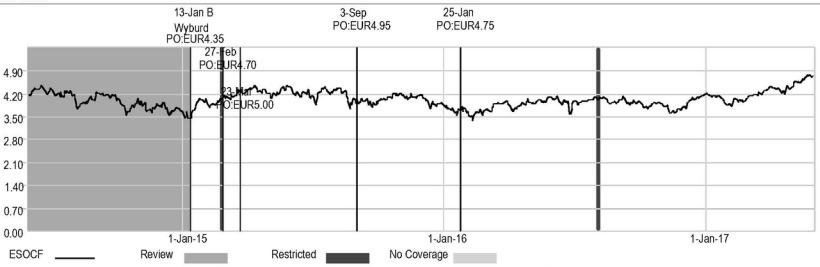
DTEGY Price Chart



B: Buy, N: Neutral, U: Underperform, PO: Price Objective, NA: No longer valid, NR: No Rating

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark grey shading indicates the security is restricted with the opinion suspended. Medium grey shading indicates the security is under review with the opinion withdrawn. Light grey shading indicates the security is not covered. Chart is current as of May 31, 2017 or such later date as indicated.

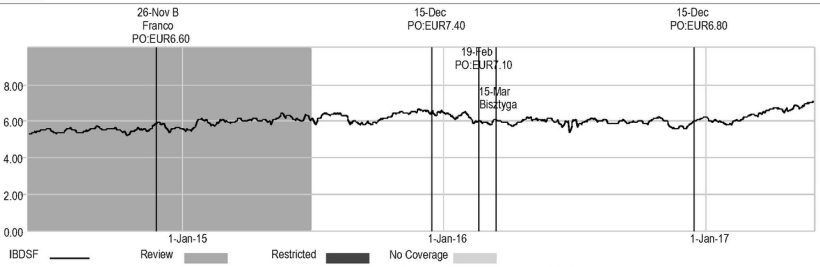
ESOCF Price Chart



B: Buy, N: Neutral, U: Underperform, PO: Price Objective, NA: No longer valid, NR: No Rating

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark grey shading indicates the security is restricted with the opinion suspended. Medium grey shading indicates the security is under review with the opinion withdrawn. Light grey shading indicates the security is not covered. Chart is current as of May 31, 2017 or such later date as indicated.

IBDSF Price Chart

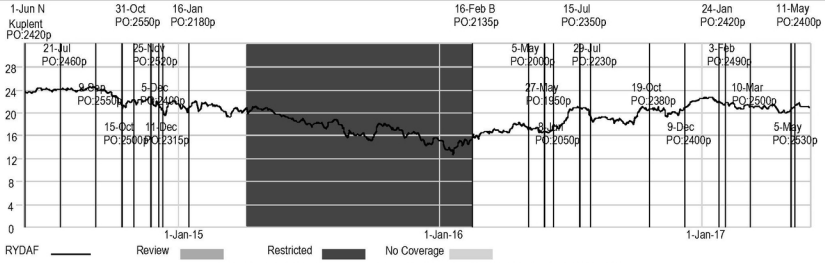


B: Buy, N: Neutral, U: Underperform, PO: Price Objective, NA: No longer valid, NR: No Rating

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark grey shading indicates the security is restricted with the opinion suspended. Medium grey shading indicates the security is under review with the opinion withdrawn. Light grey shading indicates the security is not covered. Chart is current as of May 31, 2017 or such later date as indicated.

HOUSE_OVERSIGHT_023607

RYDAF Price Chart



B: Buy, N: Neutral, U: Underperform, PO: Price Objective, NA: No longer valid, NR: No Rating

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark grey shading indicates the security is restricted with the opinion suspended. Medium grey shading indicates the security is under review with the opinion withdrawn. Light grey shading indicates the security is not covered. Chart is current as of May 31, 2017 or such later date as indicated.

Equity Investment Rating Distribution: Energy Group (as of 31 Mar 2017)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	109	49.77%	Buy	84	77.06%
Hold	52	23.74%	Hold	43	82.69%
Sell	58	26.48%	Sell	34	58.62%

Equity Investment Rating Distribution: Telecommunications Group (as of 31 Mar 2017)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	78	52.00%	Buy	53	67.95%
Hold	30	20.00%	Hold	20	66.67%
Sell	42	28.00%	Sell	14	33.33%

Equity Investment Rating Distribution: Utilities Group (as of 31 Mar 2017)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	60	48.39%	Buy	39	65.00%
Hold	35	28.23%	Hold	26	74.29%
Sell	29	23.39%	Sell	17	58.62%

Equity Investment Rating Distribution: Global Group (as of 31 Mar 2017)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	1578	51.33%	Buy	979	62.04%
Hold	690	22.45%	Hold	434	62.90%
Sell	806	26.22%	Sell	381	47.27%

* Issuers that were investment banking clients of BofA Merrill Lynch or one of its affiliates within the past 12 months. For purposes of this Investment Rating Distribution, the coverage universe includes only stocks. A stock rated Neutral is included as a Hold, and a stock rated Underperform is included as a Sell.

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Investment rating	Total return expectation (within 12-month period of date of initial rating)	Ratings dispersion guidelines for coverage cluster*
Buy	≥ 10%	≤ 70%
Neutral	≥ 0%	≤ 30%
Underperform	N/A	≥ 20%

* Ratings dispersions may vary from time to time where BofA Merrill Lynch Research believes it better reflects the investment prospects of stocks in a Coverage Cluster.

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Date: Monday, January 6 2014 02:40 AM
Subject: Re: Larry Summers
From: Kelly Friendly <[redacted]>
To: Jeffrey Epstein <jeevacation@gmail.com>;

Mr. Epstein:

Many, many thanks for your overwhelming generosity. [redacted] and I flew home today with Mr. Farkas and his family. They took very good care of us and they couldn't have been nicer. Andrew and [redacted] are still stuck in St. Thomas, enjoying the use of your car.

We are extremely grateful for everything you have done for us.

Happy New Year and hope to see you next time you are at Harvard.

Fondly,
Kelly Friendly

On Jan 4, 2014, at 1:06 PM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

> glad to help
>
> On Sat, Jan 4, 2014 at 1:05 PM, Kelly Friendly [redacted] > wrote:
>
> > Ann brought us the car. It's wonderful, thank you so much.
> >
> > We are so grateful for your generosity...
> >
> > Kelly Friendly
> > [redacted]
> >
> > Sent from my iPhone
> > On Jan 4, 2014, at 12:21 PM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:
> >
> > > you will get a call from either jermain, or cecile (the governors wife and my asst)
> > >
> > > On Sat, Jan 4, 2014 at 10:54 AM, Kelly Friendly <[redacted]> wrote:
> > >
> > > > Thank you! We are so grateful....
> > > >
> > > > Sent from my iPhone
> > > > On Jan 4, 2014, at 11:52 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:
> > > >
> > > > > jermaine , please organzie kelly to have use of the mini van. today
> > > > >
> > > > > On Sat, Jan 4, 2014 at 10:50 AM, Kelly Friendly <[redacted]> wrote:

Excellent. I will email him now.

If it's not too much of an inconvenience we would love to use the car. Is it available around 3? We are staying by the airport....

Kelly Friendly
[redacted]

On Jan 4, 2014, at 11:46 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

> [redacted] . andrew farkas is flying tomorrow. please contact him directly and as soon as you are ready i will organize the use of my car.
>
> On Sat, Jan 4, 2014 at 10:44 AM, Kelly Friendly <[redacted]> wrote:
>
> Fantastic. If possible, could my daughter [redacted] (age 11) and I go back with Mr. Farkas?
>
> Please let me know how best to follow up. We may have found a condo by red hook but haven't found a car yet.
>
> Let me know how to follow up.
> Kelly Friendly
> [redacted]
>
> On Jan 4, 2014, at 11:39 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:
>
> > my friend andrew farkas has a pretty full plane to ny tomorrwo but can take 1 or 2 of you. i can call other hotels wher we have pull.. my cars and drivers are at your disposal.
> >
> > On Sat, Jan 4, 2014 at 10:37 AM, Kelly Friendly <[redacted]> wrote:
> >
> > Mr. Epstein:
> >
> > I work for Larry Summers and as you may have heard, we are stranded in St. Thomas and the airlines are saying we can't get out until Thursday.
> >
> > Our names:
> >
> > Kelly Friendly
> > Andrew Friendly
> > [redacted]

My cell is below or you can reach my husband Andrew Friendly on his cell at [redacted] You may have met him when he was President Clinton's aide.

We would be so grateful for any help you could provide.

Kelly Friendly

[redacted]

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Date: Monday, January 6 2014 12:29 PM
Subject: Re: Larry Summers
From: Kelly Friendly [redacted]>
To: Jeffrey Epstein <jeevacation@gmail.com>;
CC: Andrew Friendly <[redacted]>;

Andrew and Caroline would love to come see the island! I've cced him to work out the details....

Happy New Year!

Sent from my iPhone
On Jan 6, 2014, at 5:58 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

> glad it worked out. if you husband woudl like to see the island this week i will arrange it.
>
> On Sun, Jan 5, 2014 at 9:40 PM, Kelly Friendly <[redacted]> wrote:
>
> Mr. Epstein:
>
> Many, many thanks for your overwhelming generosity. [redacted] and I flew home today with Mr. Farkas and his family. They took very good care of us and they couldn't have been nicer. Andrew and [redacted] are still stuck in St. Thomas, enjoying the use of your car.
>
> We are extremely grateful for everything you have done for us.
>
> Happy New Year and hope to see you next time you are at Harvard.
>
> Fondly,
> Kelly Friendly
>
> On Jan 4, 2014, at 1:06 PM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:
>
>> glad to help
>>
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I work for Larry Summers and as you may have heard, we are stranded in St. Thomas and the airlines are saying we can't get out until Thursday.

Our names:

Kelly Friendly
Andrew Friendly
[redacted]

My cell is below or you can reach my husband Andrew Friendly on his cell at [redacted] You may have met him when he was President Clinton's aide.

We would be so grateful for any help you could provide.

Kelly Friendly
[redacted]

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Date: Monday, January 6 2014 12:40 PM
Subject: Re: Larry Summers
From: Kelly Friendly <[redacted]>
To: Jeffrey Epstein <jeevacation@gmail.com>;

He can be reached at:
[redacted]
or
[redacted]

Kelly Friendly
[redacted]

On Jan 6, 2014, at 7:37 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

send me andrews details.

On Mon, Jan 6, 2014 at 7:29 AM, Kelly Friendly <[redacted]> wrote:

Andrew and [redacted] would love to come see the island! I've cced him to work out the details....

Happy New Year!

Sent from my iPhone
On Jan 6, 2014, at 5:58 AM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

glad it worked out. if you husband woudl like to see the island this week i will arrange it.

On Sun, Jan 5, 2014 at 9:40 PM, Kelly Friendly <[redacted]> wrote:

Mr. Epstein:

Many, many thanks for your overwhelming generosity. Catherine and I flew home today with Mr. Farkas and his family. They took very good care of us and they couldn't have been nicer. Andrew and Caroline are still stuck in St. Thomas, enjoying the use of your car.

We are extremely grateful for everything you have done for us.

Happy New Year and hope to see you next time you are at Harvard.

Fondly,
Kelly Friendly

On Jan 4, 2014, at 1:06 PM, "Jeffrey Epstein" <jeevacation@gmail.com> wrote:

glad to help

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Date: Saturday, October 8 2016 08:05 PM
From: jeffrey E. <jeevacation@gmail.com>
To: Jeffrey Epstein <jeevacation@gmail.com>;

It's an absurdly vast house, among the largest in Manhattan, but the dining room is grand but peaceful, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate exotic foods and beverages.
The real world seems terribly far away, but with paparazzi often posted near by, it's dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for him . But it was a massive security detail for a well known head of state who had come for tea.
We met several years before he became arguably the world's most notorious sex offender. In 2002, his plane, a meticulously appointed 727, ferried a group of people to the TED conference in Monterey. He was the mysterious and peculiarly gracious host arriving after everyone had boarded: tanned, relaxed, attentive, soliciting every guest's story and views, and accompanied by three young women not his daughters, witty, poised, helpful, and beautiful—out of a men's magazine fantasy of the luxe life.
One more thing about this trip suggesting something of his unique view of the public world and what you got to see when you are near him. Google founders, Larry Page and Sergey Brin, with their company rising into the stratosphere, came out to see his plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then, sitting in the plane's plush living room, they described, in what I could not be sure was a put-on or entrepreneurial brainstorm, the future of search ..
Since that trip, and through his travails, I have often been invited to his house to participate in the conversations of the newest ideas that often take place there.
In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein—that Epstein, most recently embroiled in charges involved under age women ,Alan Dershowitz and Prince Andrew—spends most of his day at his dining room table in the in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) conducting what must surely be the world's most extraordinary colloquial. Pictures on the table have Jeffrey and prime minister, princes, leading scientists.with fidel castro next to the photo with pope , I guess his attempt at levity.
These meetings, and this lifestyle, have somehow stayed private or secret—or apart—not out of any formal or stated restrictions, but because, in some sense, it would be very hard to explain just what you're doing there with a well known sex offender in a mouth dropping home flaunting all moderation.
And yet, defying controversy , and tolerating his societal tone deafness—or shy attitude toward the zeitgeist—still so many come. Gladly. Willingly. Feeling that his invitation is frankly quite an extraordinary privilege.

Among his frequent guests is Bill Gates, for whom Epstein has become a friend, proposing a way to leverage the resources of the Bill and Melinda Gates Foundation to accommodate many other fortunes, so that, Epstein explains, "you might join 10 or 20 billionaires on one giving project." They can leverage your unique experience and expertise in the philanthropic world and learn from your early mistakes.
As part of a many friends encouraged effort to get "out in front" of the notice that might be expected when it was revealed the number and wide diversity of the most rarified thinkers of our generation that come to visit . Epstein agreed to a limited on-the-record conversation with me.
His subject, on a morning in late fall, sitting at the dining room table—its humorous but baronial quality disturbed by an ever-present white board—is "hyper wealth." His subject is always wealth—how capital , in uber amounts should react to the given new global political, economic, and cultural moment.
His stock in trade is not the making of money, (his proletariat background not withstanding) but the issues that arise when wealth growing at a heretofore unimaginable rate, makes its entrance , altering many basic economic, social, and personal calculations. Watching his presentation recounts a math class of the mighty. The professor at the blackboard and the students (the titans), still hoping they are not called upon to answer a difficult question.
He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy—the six men at this dinner, all technology entrepreneurs, representing, together, over a hundred billion dollars and now trying to figure out how to use their resources in order to help shape the world.

Missions to Mars, age reversal. understanding the big bang, teleportation , Artificial Intelligence and Synthetic Biology are this weeks topics.
"In the past, only governments had this kind of money, money of a truly altering scale," says Epstein in a chipper and smoothed-out Brooklynese. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to question some basic assumptions and try change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique for their time . They alone had such resources and will. Now you have legions of people who must at some point (hopefully before death, but eventually non the less) transfer vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.
"Except that it turns out it is actually hard to give away this kind of wealth, without unintended negative consequences that may cause as many problems as you're solving."
Epstein's long-time business thesis is that the hyper rich know very little about the essence of money. They may know about their own businesses, but the great sums that are realized as a result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 63-year-old Epstein, they will almost all be dead in 50 years, most well before that, meaning $4.2 trillion, compounding everyday, will eventually willhave to be transferred to new hands . "So, to understand the future, what you have to begin to do is follow the money, not in Watergate- like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."
Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, nobody, of the hyperwealthy wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that its burdens are in many cases too much to handle. One of his rules for the younger generation eventual recipients is that they all take accounting classes. Along with a video tape of the parents discussing their views on money. This acts as the bible for the too often conflicts amongst following generations

Epstein's role in this discussion of the private allotment of what is in fact a decent fraction of the U.S. Gross Domestic Product is not only as an experienced philanthropist himself but as a sort of adviser or brain—the " rich whisperer"—making him, in addition to his own vast wealth (two private islands , one for guests) , arguably among the most influential people you've only heard of for reasons that have absolutely nothing to do with his influence.

Epstein sometimes seems to have an out-of-body attitude toward his own fate and bad press—that's something that occurs and there is little one can do in the parallel world of the lunchbox crowd . Not long ago, when I met him for lunch in New York, he noted that he hadn't been out to eat out in a restaurant in ten years. It was a not particularly pleasant experience for him and we were done in 30 minutes. (He said he couldn't connect with so many distractions)
On the other hand, Epstein's life sometimes may seem part of a challenge: not just look at me, but, even I can't believe what you see? But, perhaps, he is just naive to what others are thinking: a negligent and in a sense childish tone deafness.
Press accounts recycle the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel world of absolute entitlement—with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of wrongdoing inside.
In fact, the life in the house, without wife or children or conventional domestic demeanor, rather conforms to the scripted fantasies: somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women—in their twenties and thirties—who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and

household infrastructure. One woman, on an afternoon when I was there, had just returned from an around-the-world honeymoon that Epstein had arranged for her. Some are, or may have been, his romantic interests. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became one of new yorks top doctors—Epstein helped finance her medical school education —She married hedge funder Glen Dubin. Together they financed the Dubin Breast Center at Mount Sinai Hospital.

Epstein will sometimes move a meeting in his dining room outside to Central park—his idea of going out to lunch is a Sabrett's hot dog—with the various young women in the house acting as the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian like attitude can also at the flash turn to sharply honed financial discussion. The highly poised young women in a mansion on the Upper East Side with various office responsibilities remind me of the various uptown art galleries in the surrounding neighborhood. They mingle freely with his hyper powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive colleagues (which, of course, might be regarded by some as having its own fetish-like attraction). Epstein explicitly denies , and is seconded by the group that there is no sexual quid pro quo. ("If you're sleeping someone you work with they then believe they can come in late—that's what Jimmy Goldsmith used to say.") Still, the constant attendance of so many comely young women, seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or non- smirky way. And while it has been said that it may be part of the appeal for the men who come to visit Epstein, it is as well a peculiarity for them that they merely put up with in order to spend time with him.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the fact that, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to whose turf, that, when they want to see Epstein, they tend to come to him. He's created a world and you enter it. Many arrive in weekend clothes. or as one world leader said , Ah here i can come in sweat clothes .

His conversations are less meeting-like—focused and agenda-driven—then narrative therapy . In effect: the outside world comes to Epstein's and he eagerly solicits reports. It's a real time newspaper, or the news you don't read in a newspaper, market movements before they occur, geopolitics with the ultimate decision makers at the table, the health and personal eccentricities of some world leaders, discussions in hushed tones of the next high level government appointments soon to be announced.

It's Sunday lunch—in his schedule from a week last fall—with Gates, Mort Zuckerman, the real estate billionaire and owner of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor. That evening its Sheikh Hamad Bin Jassim, the foreign minister of Qatar. Hamad lives across the street in a similarly furnished house—he and Epstein have the same decorator. (Epstein, in his relaxed and amused manner, keeps prodding: "Why are you financing the bad guys? What do you get out of that?")

Next morning, Epstein is joined for breakfast in the dining room by the lawyer Reid Weingarten, who's represented, among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sachs's Lloyd Blankfein. Weingarten, hoarse with a cold, is still lamenting his failed defense of former Connecticut Governor John Rowland. (later to be overturned on appeal) After a blow-by-blow of the trial, they discuss the Qatarian's visit—Epstein served chocolate made with specialy chosen pistachios grown on the Sheikh's farm—and speculate about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny. Weingarten represents Gulen , the U.S. target of the Turks, There is, in Epstein's dining room, always an alternative version of world events—"perception versus reality," says Epstein, "not to imply that one necessarily has greater weight than the other."

"Why," I ask Weingarten, when Epstein briefly steps out of the room, "do so many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's truly no other place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, an active investor" in Bitcoin and the programmable currency space. Epsteins blackboard gets quickly filled with the details of the Bitcoin blockchain mathematics,

After a bit, Epstein invites his next appointment to join them: Larry Summers, the former treasury secretary and President of Harvard, off Diet Coke, digs deep into the Sheikh Hamad chocolates, then focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings, "I have opportunities here. But an additional feature of my decision problem, roughly speaking, is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"
"Well," says Pierce in seeming dramatic understatement, " no question I expect as in any nascent business one is going to have some low quality characters playing early in the space…"
That evening, in the Epstein dining room (he seems rarely to use the rest of the house's 50,000 square feet), there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.
The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House, whose name I am asked not to use. There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov. Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's explanation : "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")
Then Richard Axel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

The question is why, in the face of such public flogging , with the paparazzi so near,do the high and might still come?
Perhaps simply that it's intelligence of a high order. Not just market moving information, but Epstein and Summers trying to unravel the conundrum of zero interest rates, or Epstein and Noam Chomsky on memory and language, or Epstein TK…
What goes on at Epstein's house might seem just to confirm everyone's worst fears about power and the powerful: it's all insider stuff. But the conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world, such a buttoned-down and agenda-driven place, are actually hard to have.
"That's Jeffrey," says Mort Zuckerman, (whose paper, the Daily News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye.
On Epstein's part, there is the wink: In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the elephant in the room. (Epstein says too it's a reminder that elephants have 23 copies of cancer tumor suppressor genes and humans have only 1.) Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: "At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of advice - an actual honest broker. That I guess could be described as the usefulness of a "colorful reputation"

In some sense, too, it is perhaps generational: Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started in the late

1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one.
Epstein often tells his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.
The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years. Without a college degree, an unsolved mystery , he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.) Dalton fathers perhaps sensed in him a young man on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his faux wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) Another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg. Hence, Epstein, like many in the late '70s, arrived on Wall Street.
If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction. "In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a '50s mentality. But in the mid '70s stock options started to be traded. In essence, the first version of formal derivatives. The movement of the instrument was not directly attached to the stock price but a derivative of it. The world of investing began turning from relationships to math. In a sense I didn't really know how to make money , as I produced little. I merely tried to learn how to "create" money.
He soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.
If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. "I would head to Kennedy Airport and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was actually going until I got there." Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $10 million. "The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an less that stellar brother-in-law, became hopelessly outdated as amounts exponentially increased. You can't spend a billion dollars, you can just hope to reallocate it to different investment classes. And you can't give away a billion dollars without a vast staff, in effect going into a new give away business at its core just another business. However one you are likely to know little about."

For a period, one part of his activities, he says, was recovering looted monies . Then, in his telling, he was representing a series of vastly wealthy people and families—helping them to navigate the ambitions of their wealth. If they had big dreams before, it's nothing to what they can have now.
If early in his career he might have seemed like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charmer , later he's George Peppard in Banacek, smart and astute.. At just about this point in the narrative, the mystery about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without obvious position, public holdings, or overt paper trails. His is a substrata of super wealth, i.e. without institutional establishment credentials or academic bona fides. He's a freelancer. That's the rub: he's free. i.e. doesn't work for anyone.
Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a

Coney Island, Zelig-like silver haired financier.
In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter once advised me not to go to Epstein's house or accept a ride in his car least I risk being put under his spell, . ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

He joined the board of Rockefeller University. And then he was suddenly on the Trilateral commission, that cabal of business people who are fancied by some conspiracy buffs, as the group running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. He bought an airplane. Then another. He expanded his holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island and then bought the neighboring island for guests.
He befriended Bill Clinton in his new after-office life—and that would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton was considered the world's ultimate sleaze ball—was suddenly being ferried around in the jet of…who exactly? The New York Post was the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. "I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people."
I met Epstein around this time, on the flight out to TED. Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me a dearth of understanding of the subject, began to ask me about detailed and focused questions re media—the upside, downside, and nature of media coverage. (Epstein's very brief flirtation with the media would result in his backing an unsuccessful effort, of which I was a part, to buy New York Magazine in 2004.)
New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such magnificent wealth and substainal influence. Epstein, sensing that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

"Then you should have lived in a two bedroom apartment in Queens," responded Carter.

And then the real troubles began. Epstein had a prodigious massage parlor outcall habit especially in Palm Beach with its many "Jack Shacks." After Epstein's round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein's house called the police. The police interviewed the girl—who was TK at the time, but whose website identified her as 18—and the girl supplied the names of other girls, some of whom were also younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18; the others were in their 20s and 30s (one woman was in her 60s)—a number of whom gave statements describing happy-ending massages. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than this.)
Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.
The release by the Palm Beach authorities of the depositions by the 18 girls describing the incremental details of the sex acts, the timing of the charges coming just after Rush Limbaugh's high profile Palm Beach drug bust, the Clinton connection and then with the sudden interest of the Bush FBI in the case, moved the case from solicitation to scandal, and a plea deal with a sentence of 18 months.
He got out of jail in 2010, serving 13 months, of incarceration and then 12 months of house arrest and moved mostly seamlessly back into his life, to the shock-shock of tabloids whenever they are reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprisingly few others dropped him, the Clinton's did, an irony of the present tabloid interest in Epstein's old address book with its many Clinton contacts. And his sex offender status has transformed him from libertine playboy to sex offender in tabloid parlance.
While he has regularly entertained PR proposals aimed at his public rehabilitation, until Friends prodded him, and until this recent renewed tabloid fever, Epstein had concluded that he was perfectly satisfied living behind high walls and in his own exclusive club. Even the recent Dershowitz-Prince Andrew chapter seems like a parallel disturbance rather than something that is actually affecting him. His friends are as loyal as one could only hope for . In speaking to quite a few, without exception they stand behind their trust and like a christain chorus, all say , if you only knew the real story. but Jeffrey has not made any public statements But true or not, the story has taken on a life of its own, with the US and British tabloid press continuing, so far unsuccessfully, to search for a smoking gun connecting Clinton to underage girls, which could have—many obviously hope—the effect of derailing the Hillary Clinton presidential campaign.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice to follow, Epstein would have done little differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of a groups morality, custom, politics, the media, that's just a bit of bad luck.
And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have not been damaged as they would prefer. -thats worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich good looking ,white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent playboy (excuse me, sex offender) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.
But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to support him and are willing to expound on his virtues. Generous philantroppy, science funding at he highest levels and a freedom of discourse that borders on dissent but often is the inspiration for great ideas. . Epstein is their sole confidant in many instances, Not the only nexus of them, but one of them. Dr. Epstein. may i Lay on your couch. This is the back and forth, the power loop. His expertise is knowing what other people want to know, combined with a lightning fast mind . Which surely offers those who are a part of the conversations a unique sense of confidence that they too now can understand how the world of money works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich.
In the last days of my interviews with Epstein, he was called by a particular world-stage individual, among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. Epstein welcomed him to the club.

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From: Thomas Jr., Landon [redacted]]
Sent: 11/14/2016 3:32:12 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Fwd: EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because ....

Importance: High

The latest thinking from London hedge fund crowd
---------- Forwarded message ----------
From: **Ozan Tarman** <[redacted]>
Date: Mon, Nov 14, 2016 at 9:40 AM
Subject: EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because ....
To:

Classification: Public

EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because Hillary bets worked as Trump trades.

Wider, steeper core rates, stronger USD, weaker EM is the Rage. The last one, EM, is the big loser out of Trump Reflation Theme. DM over EM and divergence within DM are very much in vogue. All gains of EMBI since March are gone!

For Rates & FX, it does feel like early days of Taper Tantrum trade of 3 years ago. Both dominated by US price action. In both, hedge funds have now caught the moves, play offense & ride the Trump narrative. Real Money is on the ropes, caught long Fixed Income/duration/carry and cannot play defense fearing Outflows.

In Emerging Markets, most outflows are retail, ETF driven. All eyes on next leg of institutions. In equities, banks big winners; FANGs losing. I asked partners 2 questions. 1) Would the "this will be great for business, feel good factor" wave out-run "if real yields go up, equities are a sell" fear. Clients are torn, but the former, bullish camp wins for now, my colleagues suggest. There are skeptics though.

2) In Europe, do fears over Renzi losing & Le Pen winning climb over the big momentum behind banks etc. Again, my equity team suggests, "no, reflation wave may win over Italy referendum anxiety,, for now." Renzi is now widely expected to lose, so a "yes" would be the big surprise trade. And the bigger elephant in the room is Le Pen. If she wins in May, Europe as we know it may really shake.. But for now this is more in the radars of Euro & EBG traders.

Core rates are driven by the speed of TY sell-off. And in G5 FX, the big driver is USD/JPY. The stronger "we should believe in Trump reflation narrative" winds are, the more USD/JPY buyers we see.

Some in Research warn that Trump may succeed in "tax cuts, faster than any infrastructure spending," but few macro are in mood to listen. A few players believe, looking at trade weights of each with US and magnitude of sell-off, Asia FX may have more weakness to come than MXN. Will copper/infrastructure rally eventually help Chile?

Most macro love NKY, willing to love it more. Bringing it home; fast macro money players are rushing to erase losses, year long pains through wider rates, longer USD, weaker EM, stronger equities.

Real Money is in defensive, remembering Taper Tantrum days, fearing institutional outflows & forced selling of carry hope positions.

Those who want to "fade" Trump rally, seek valuation in EM, believe core rates can tighten to get a breather are in Minority.

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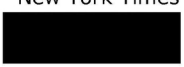
Landon Thomas, Jr.
Financial Reporter
New York Times



http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

"Skin So Thin, It's Inside Out"

Ethan Persoff talks with *Paul Krassner* about running *The Realist*, hacking *The New York Times* Bestseller list, and that "true, extraordinary liar," Donald Trump.

In the late Fifties, three things radically changed the course of American comedy: Lenny Bruce, The Second City, and The Realist. *From its first issue in the Spring of 1958, Paul Krassner's iconoclastic "journal of freethought and satire" created a comedic template that is still being followed today; its mix of fact and intelligent opinion delivered with a mordant, knowing skepticism, is as current as John Oliver and as omnipresent as the entire internet. But you don't hear much about* The Realist *these days — it's the fate of truly seminal sources to seem inevitable, when in fact they reshaped the world in their own image.*

*Fortunately, in 2006 Krassner teamed with archivist/comic artist Ethan Persoff on The Realist Archive Project (*http://www.ep.to/realist/*), a free online repository of every issue of the magazine from its 43-year run. They recently collaborated again on a deluxe coffee table book,* The Realist Cartoons, *published by Fantagraphics.*

The election of Donald Trump seemed to be a particularly Krassnerian moment, so I asked Ethan to call Paul and ask a few leading questions. — MG

ETHAN PERSOFF: Paul, what's your opinion of Trump?

PAUL KRASSNER: Where to begin? Personally, for me, it goes back to when George Bush won the presidency in 2000. That was due to the electoral college, even though Al Gore had won the popular vote.

That same time, Hillary Clinton was elected Senator. She announced, publicly, the first thing she was going to do was get rid of the electoral college.

Years later, I was doing a column for *The New York Press*, and I sent Clinton a letter asking her about the status of her promise. She didn't reply.

During the campaign, Trump called Clinton a crook —

EP: Right, "Lock her up".

PK: —he called her a crooked businessperson. But that's what *he* was. Everything he says about anybody is really about him. He's a true, extraordinary liar.

EP: What's your opinion of his "fake news" media scolding?

PK: Another example of projection. He calls the newspapers dishonest, because he is, in fact, the most dishonest.

Trump became an insanely narcissistic dictator once he won, bragging about his electoral numbers as proof. But prior to that, he endlessly insisted the electoral college was a sham. That, to me, wins the prize for irony.

EP: I have to wonder, what if Clinton had won the electoral count, but lost the popular vote?

PK: Oh, then he would have said it was rigged.

EP: Lock her up!

PK: When I wrote the letter to her, it was partly because I'd heard the electoral college was based on slavery.

EP: And there's gerrymandering, which is also racist.

PK: Yes. You know, the thing with Trump, is there's talk of anything from impeachment, assassination, treason ... But that leads to more irony, because that would leave President Pence. Pence has just as much an interest in turning evolution around, and going back to barbaric times, but has the ability to pass as sane. Trump can't do that.

EP: Do you think Trump's madness is an asset to his opposition? He's such an easily identifiable lunatic, does that provide for a sense of protection, as opposed to Pence, who is so much more canny and quiet?

PK: There's fear of Trump, and then there's dictatorship in action. The things he's been doing are disgusting -- these appointments! Like Rick Perry for Dept of Energy. It's so insane. And then, Betsy DeVos. No education experience ... I think even starting in kindergarten. *(Laughter)*

EP: Yes. Everyone has their own personal thing that they're scared about with Trump. Me, it's the environment. I can't believe his appointment of Scott Pruitt with the EPA.

PK: They're all horrible. Then there's Michael Flynn. He is the core of the hypocrisy of the relationship between Trumpo the Elephant and Putin.

(continued)

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EP: What's your take on Trump and Russia?

PK: I read one article where an unidentified Russian official used the phrase "useful idiot". That's really what it is.

It's like J. Edgar Hoover; he stayed around for decades [via] blackmail. I think it's the same thing. You don't have to say it, you know. Hoover would just go to JFK and say, "We found some photo of you in bed with Marilyn Monroe. But don't you worry, we'll keep it in our safe."

EP: You've lived through some Red scares; can you imagine any other time where this Russia stuff would be forgiven?

PK: I think foreign countries may have influenced previous elections. I don't know, but it was mostly *before* the technology of the Internet. So, if there's no Internet, there ain't no hackin'. It's like there ain't no divorce if you don't have no marriage! Whatever deal was made, or hacked, I think Trump decided to run the night of the 2011 Washington Correspondent's Dinner. Obama had *such good jokes* that night. But the camera was on Trump, and you could see that he was *foaming*.

EP: That shot of him is amazing. The video of Trump's boiling back head. It's really gorgeous.

PK: Humiliation makes a difference. You know, years before any of this, Trump developed his *modus operandi* for media/political success: You cheat. What pushed him into public profile was the stated success of his book, *The Art of the Deal*. But what I found out that is that he bought 20,000 copies of his own book from Random House, and that made it a *New York Times* Best Seller.

Similarly, L Ron Hubbard had his book *Dianetics*. He had a Scientologist working at *The New York Times* who had access to the details of their best sellers lists. Back then, there was a list of cities that the *Times* measured sales at particular book stores. So, Hubbard didn't have to buy 20,000 copies, he just had his spy tell him where to buy several copies at those locations, and the Church of Scientology had an instant "Best Seller".

EP: Earlier you mentioned two interesting words: "assassination" and "impeachment". You have the benefit of having lived through Kennedy and Nixon.

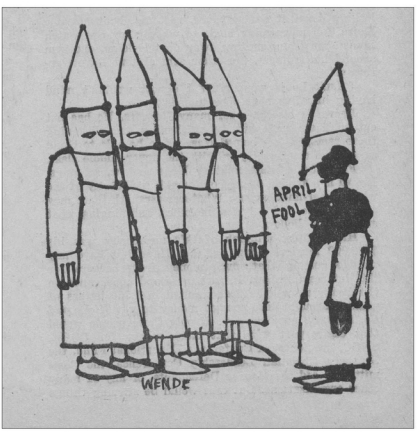
PK: My earliest remembrance of a President was Franklin D Roosevelt.

EP: Do you remember him on the radio?

PK: Yes. He was famous for having his Fireside Chats. Which, through these decades, has evolved into tweets.

EP: Here's a very pointed question: When Kennedy got shot — what's your memory of that?

PK: Several memories. One was my first wife was out shopping, heard it on somebody's radio, and immediately bought a TV set. That's one thing I remember, just being glued to the television…And I was getting calls, maybe not that day, but from people wanting to write an article about the conspiracy aspect of it. You know of Jean Shepherd, right?



Cartoon by Wende, from The Realist #37, *Sept. 1962.*

EP: Of course.

PK: He was a big influence on me. He said, "This will change the whole country." He thought it was a coup. And it turned out that the CIA had the Mafia do it. After all of my studying about it, that's what it was. The Mafia were the puppets of the puppeteer in that.

I would listen to Jean Shepherd every night, and he said — he *predicted* – that America would have a dictator who won the presidency because he came out of show business. And it happened. You know, [Trump's] not like Ronald Reagan, who came out of Hollywood, of course. But in Reagan's case, he couldn't make the distinction between reality and his movie roles. But he did say he was willing to take a senility test! Of course, the suggestion that he'd take a senility test is a suggestion that you already are senile.

EP: Right. That's very funny.

PK: Jumping back to Trump. Along the same lines of the buying the 20,000 copies of his book, the first day of his presidential campaign, he came down the Trump Tower elevator. There were people with placards, saying "TRUMP 2016" — but they were all hired actors. Fifty of 'em.

EP: You know, the success of that red hat really disturbs me. It's so idiotic — but it really seemed to work.

PK: I agree. No other presidential candidate had a cap like that. And a slogan. I've seen people on TV asked, "What do you think about the election?" One elderly woman said, "Oh it's wonderful! We're going to Make America Great Again!"

EP: How could they win on a campaign of awful messages? Maybe Steve Bannon is some AD&D wizard, casting a spell that everything negative becomes positive. "Trust me Trump: kick babies instead of kiss them. It'll work!"

PK: I agree that's possible. But it's narcissism that made Trump do this. Narcissism with skin so thin, it's inside out.

That's what he was doing, too, during the campaign. If your skin is inside out, then it's projecting. Hillary "was a crook," but *he* was. He called Bernie Sanders "crazy" and *he* was. "Lyin' Ted Cruz"…

EP: Why do you think those nicknames were so effective? It seemed, once you were labelled by him, you were done.

PK: Bush had his nicknames, but they were favorable. He called Karl Rove his —

EP: "Turd Blossom"!

PK: Right, "Turd Blossom" …and he *was*.

EP: The prettiest turd.

PK: Regarding Trump's narcissism, here's my favorite joke: Trump was in the elevator of Trump Tower. It stopped on one floor and a woman got in. She said, "Oh! You're Donald Trump! Oh my, I would love to give you a blow job. I really would. I have a great reputation. I will make it that you will never forget this blow job. I really am good. I practice a lot. And I

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want to give you a blow job so much."

And Trump says, "Yeah, but what's in it for *me?*"
(laughter)

There's an old saying in psychology. In order to deceive people, you have to deceive yourself. Here's the thing: Trump has *instant* belief. He just *believes* whatever he says. With Obama's birth certificate controversy, he would *believe it*, even though he had to *know* it wasn't true. Then, he said he'd *hired investigators* to go to Hawaii.

EP: *(embarrassed for history)* I remember that.

PK: I think that was a lie, too! I don't think he ever sent them. Or, if he *did* send them, and they didn't find any "evidence," then he lied by omission...of facts.

EP: I wonder if these lies are going to have consequences — if impeachment will happen. Getting Congress to do it will be nearly impossible.

PK: There's little hints that the Republicans — their conscience is gettin 'em. Those are my hopes.

EP: The fear I have is we're going to lose this country through this motherfucker. That we're going to have a police state – that we won't have a free press. Do you think these are real fears?

PK: Oh, yeah. Well, you know, a police state has a bad reputation. I mean, cops love it!

The thing is — ever since I took a lot of acid — I have become an over-doer of being optimistic. You can pick your metaphor, but I think Trump's a blessing in disguise.

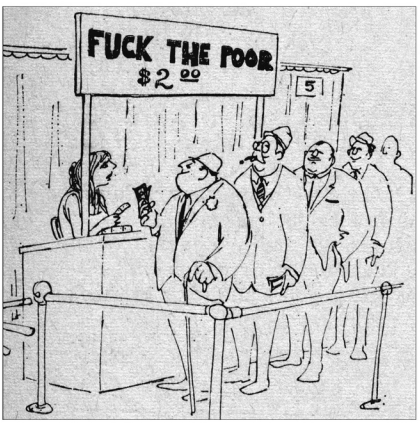
With these scares, he's the monster — The Frankenstein — that we've created. It's from the country's dumbing-down of the media. Especially with the commercials. You know, when they first had TV news, they didn't have commercials.

EP: I've been trying to get more into the habit of watching *PBS News Hour*. It's amazing to have a full hour of commercial-free news, and not looping news, like CNN. What's sad is I find I have to build up the stamina for it. I actually find myself wanting commercial breaks. PBS had less coverage of Trump's campaign, too. Probably because there were no ads to sell.

PK: The epitome of it, regarding coverage of Trump, was CEO Leslie Moonves, who said "It may not be good for America, but it's damn good for CBS!"

EP: You know, the week Trump won, to deal with shock, my mind started remembering things that made me laugh. One of your stories showed up: The one when you met Bob Dylan and asked for his opinion about the Holocaust.

PK: I was at a radio show. And he was watching in the room. It was me, Abbie Hoffman, a rabbi, and some others. During the panel, the Holocaust was integrated into the dialogue. Dylan was there watching, sitting in a dark corner in the back of the room. When the program was over, he walked up and said to me, "You didn't say much." And I thought that was funny, because *he* was such a minimalist.



Cartoon by Mort Gerberg, from The Realist #50, *May 1964.*

Then I held up my fist, like a microphone, and asked, "So, what do you think about the Holocaust?" He offered his minimalistic reply: "I resent it."

EP: That's just too good a joke.

PK: I remember that, more than the radio panel, because it had such an essence of itself.

EP: That's the benefit of minimalism, right? It's like these insane Trump tweets. In some way, they're stronger because they're just 140 characters.

PK: By the way, did you see Anderson Cooper laugh for five minutes when Kellyanne Conway used the phrase "alternative facts"? It was such a bizarre oxymoron, he couldn't stop laughing.

EP: My favorite one of her's is the Bowling Green Massacre. The Internet was hilarious on that. For the Holocaust, of course, it's "Never Forget"; so, for the Bowling Green Massacre, people were posting pictures of green bowling balls, with the phrase "Never Remember".

PK: Oh, that's good. It's like what I was mentioning about optimism. The answer is what we saw right after the inauguration, with the march and the rallies. Trump is essentially the monster we've created. Whereas Frankenstein was made from corpses, Trump was made from fringe subcultures: First from the white supremacists ... Trump was on the radio with some insane conspiracy theorist, and the host said, "My listeners, they really *love you*."

Trump then went to the Evangelists, 'cause that was another subculture. He couldn't think of anything, the first time, from the Bible. Next time, though, he brought a Bible with him. He was smart enough to take the cellophane off it.

EP: I think for the most part, you've always been on the right side of history, actions you've taken and political/moral positions — everything from civil rights, to women's rights, to drug freedom. But I don't know how you decided to do some of this shit. For example, you ran an abortion referral service inside *The Realist*. No reward beyond a moral victory.

PK: Back then, when it was illegal, people thought doctors who performed abortions should be arrested and convicted.

EP: Let's discuss the development of your ethics. What's your internal compass? Have you always had these instincts?

PK: It happens organically. I remember when *LOOK Magazine* said about abortion, "There are no humane doctors ... all of them are just in it for the money." And I knew of one: Doctor Spencer in Ashland, Pennsylvania. He had a reputation. It turned out, to be, also, that he was a subscriber.

So, I wrote him a letter, asking for an interview, because I wanted to point out that *LOOK*'s statement was a lie. And I

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The Disneyland Memorial Orgy, *by Paul Krassner and Wallace Wood, published in the May, 1967 issue of* The Realist. *Readers with annoying bare patches on their wall can buy a copy at* www.paulkrassner.com *for $35.00 plus shipping and handling.*

promised him that I would go to prison sooner than identify him.

EP: Was that a concern of his?

PK: I just volunteered it. So that he would know. And he allowed me to interview him, albeit anonymously.[1]

When I published the interview, I started to get calls. Women who were pregnant that didn't want to be, and didn't know where to go. These were different ages, different classes. I remember one that really had the most force to it: A nurse called. And she couldn't get a doctor to help her. From a hospital, or even privately.

So, I referred her to Dr. Spencer. And she sent me a gift. She knew I had a little daughter. And she sent me a doll. A lion. Holly, my daughter, named it Lenny the Lion, after Lenny Bruce.

EP: Oh, that's great.

PK: I began to get more and more calls, and I couldn't say no. You know this is not an abstract placard saying "Peace Now", this was somebody that I could help. I couldn't say no -- 'cause there are so many things going on in the world that you *can't* help.

I never *thought* I'd become an underground abortion referral service. But, you know, it became my calling, in a way.

EP: How long did you continue to help people out?

PK: I stopped when I moved to San Francisco [in 1971]. By that time there were others doing referrals -- Protestant ministers. So, I left my practice behind me.

EP: *The Realist* was one of the first, if not the first, news sources to talk about Enovid [the first birth control pill].

PK: In the first few issues! And the pill was just a rumor. This guy, a journalist -- I didn't pay him much – he did a two-part article, I think I paid him $100 for each. He went to Puerto Rico, where they were testing women. I had mixed feelings about this, because they were testing them like guinea pigs. But it worked, and it became known as "the Pill."

EP: Since we're referring to a lot of issues of *The Realist*, we should probably mention the online archive. I recall, with some humor and business sense, you only asked one thing: That we edit the image to the Disneyland Orgy to include a link to your site, saying a poster was available for sale on your website.

PK: Oh yeah, that was a *pure* ad.

[1] "An Impolite Interview With An Abortionist," *The Realist* #35, June 1962.

EP: The first ad to run in *The Realist*, probably?

PK: Well, sure. *(laughs)* It was letting people know the poster existed.

EP: In the ten years that the archive's been up, it's enjoyed a lot of regular traffic and is now referenced in many dissertations. By the way, did you see the *Washington Post* article linking to the archive, specifically the LBJ story?[2]

PK: Oh, yeah. I heard about that from Harry Shearer. He sent me the link to the article, where they refer to me as an "obscure 1960s figure." The subject line of Harry's email was "It's official!" and then in the message, a link to the article and the words "you're obscure!" I laughed hysterically.

I think the LBJ piece ("The Parts Left Out of the Kennedy Book," *The Realist* #74, May 1967) is still the most notorious article; people remember it. Lewis Black said he was fifteen when he read it and said he was shocked! You know, because the article was written as a seduction, in a way. To the culmination, to the... what do they call it in sex? The climax!

And then I published the anagram for Nixon's veep's name, Spiro Agnew.

EP: "Grow a penis." Do you remember

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how that got published?

PK: It was originally a guy from *LIFE*. He'd interviewed me, and mentioned some of the staffers had seen *Rosemary's Baby*, where there's an anagram moment with Scrabble pieces, something to do with witchcraft —

EP: "Steven Marcato".

PK: Yeah. Staffers had discovered this joke about the Vice President's name, based on that scene. They couldn't use it in *LIFE*, but it had to go somewhere. So, I ran it in the four-page comic that Richard Guindon and I did together.[3]

EP: Both the LBJ piece and Rosemerica comic clearly bend into surrealism. The response of readers, delighted and *infuriated*, had to be one of the best moments of your life.

PK: Many many people believed [the LBJ piece], even for just a moment. It was something I'd learned from Joseph Heller, when I interviewed him (*Realist* #39). I asked about one of the patients in *Catch-22*, who is in a veteran's hospital. The patient was wrapped up like a mummy, fed through IV's, excreting through tubes — he was just a middleman for digestion. I asked Heller, and he said, "Well you know, it's possible, but not probable."

EP: "Possible but not probable" explains these last fifteen months on Earth.

PK: Regarding the LBJ piece, there were people who claimed to remember a photograph! *(laughs)*

People who said they believed the article, if only for a moment, included Daniel Ellsberg, who released The Pentagon Papers. He said the reason he believed it, was because he just so much *wanted* it to be true.

EP: Speaking of Ellsberg, and now Trump, how do you feel about leaking?

PK: Well, I leak several times a day. *(Shared laughter)*

EP: It's very good for you.

PK: That's bladder control.

EP: It's funny that the Russian sex blackmail was Trump having a urine party with a bunch of hookers.

PK: That was a fake. But it became a perfect image for comedians worldwide.

EP: But it's like the LBJ issue — maybe it will stick. People also remember The Disneyland Orgy from the magazine. And the wonderful FUCK COMMUNISM poster.

PK: You know, I use a walker, but I go to the gym three times a week, to use the treadmill. I had my FUCK COMMUNISM t-shirt on, you know, the red white and blue. As I was walking out, there was a policeman who held the door open for me. And he saw the t-shirt.

EP: Oh, god —

PK: He said, "Hey, that's a great t-shirt!" He took it literally!

EP: I know the poster was said to be the perfect confluence of two banned terms.

PK: Kurt Vonnegut praised it for that.

EP: "Fuck" has kind of won, right? You can say "Fuck" anything now, and it's fine. That is one experience I don't have, growing up when that word was so verboten. I understand how saying "Fire" in a crowded theater is illegal, but I don't have an understanding of a world where saying "Fuck" could get your arrested. How did Lenny Bruce work around it?

PK: He had to use a euphemism. He'd have to say "frig."

The first time I met Lenny, he came to New York, and he called — because *The Realist* was his favorite magazine.

EP: That had to feel great.

PK: It did. Steve Allen was the first subscriber. He would give subscription gifts to several friends, and Lenny was one of them.

Lenny then sent a lot of subscriptions to his friends. That's how it started, and how it grew — word of mouth — which is better than advertising, because it's free and you're getting it from someone you know, an individual.

When I met Lenny for the first time, I gave him an advance copy of an interview with Dr Albert Ellis, a psychologist. Lenny was reading and said "He used the word ['fuck']!" I explained to him that Ellis had a campaign that "fucking was good" therefore, if you wanted to say something unfriendly, you should say "unfuck you"...

Lenny asked, "How does he get away with this?" I told him, "The Supreme Court said use of the word wasn't obscene in a magazine if it was a redeeming social value, and no prurient interest."

Lenny asked, "What's that? Prurient?" He went to his suitcase on his bed in the hotel room. Inside was a huge unabridged dictionary. At first, it said something like "itching" — and Lenny asked, "Is this something like a novelty store?"

EP: Where they sell the powder!

PK: Or the dribble glasses. But the second

[2] "Trump's Presidency is Doomed," *The Washington Post*, January 16, 2017.

[1] "Roseamerica's Baby," *The Realist* #93, August 1972.

Created in 1963 by Paul Krassner and John Francis Putnam, this poster was a staple of dorm rooms for decades. Kurt Vonnegut called it "a miracle of compressed intelligence nearly as admirable for potent simplicity, in my opinion, as Einstein's $e=mc^2$."

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definition was "arousal of sexuality."

Lenny was performing that night at Town Hall. He asked me to hand out copies of The Realist, with the Ellis interview, in front of the theater. From then on, Lenny thought that his act would be protected, because it had redeemable social value. But that's not the way prosecutors felt about it.

EP: Right. The conspiracy theory I've heard is that it's because he took on the Catholic Church.

PK: Oh, absolutely. Absolutely right. His "Religions, Inc" piece got him in a lot of trouble. The reason he got busted for obscenity was there wasn't a law against *blasphemy*, but that's what he was really arrested for.

EP: You know when Scott Marshall and I were putting together the Lenny Bruce tribute in the Wilcock comic, we included John's experience with Lenny. You're in a few panels. It's been fun to find opportunities to include you in the comic -- you're in five scenes now.

I have sort of a funny agreement with John: If he can't recall the full story, or dialogue, I can fill in the details.

PK: Oh (laughs) well that's trusting.

EP: You both are very trusting people! He couldn't remember verbatim exchanges with you from 1961. So, we gave the joke from you to be "Lenny would be a big fan of your *couch*, John."

PK: That's funny. When I saw that in your comic, I remembered saying it! I remembered something that didn't happen. Now I have something in common with Kellyanne Conway.

It's something I would have done. You made up something real.

EP: Thank you. I only do that in a few panels to keep everything glued together as a story. Otherwise it's just a bunch of disconnected fragments.

PK: Too close to reality, then.

EP: How do you think Lenny would respond to Trump?

PK: I think he would do it as a really high form of satire. He would make Trump a hero -- in the sense that he would take a different approach. I'm saying that because he did that about Adolf Eichmann, the Nazi organizer. Lenny would say "He was doing his job!" He would just take an approach like that. Lenny would "appreciate" the defined tragedy.

I think Bill Maher's show, February 17, was terrific. Lenny would have really appreciated it. Just the same way Lenny got serious sometimes, and the audience would say, "Hey, you're honest!" instead of "Hey, you're funny." Maher's monologue that night was really beautiful. Because he's well informed, and he couldn't just do jokes about it. He talked about the fascism. He talked about the dangers. It was just brilliant presentation of the seriousness of fascism in action.

EP: What do you think Abbie Hoffman would do about Trump?

PK: Oh, I think he would do the same thing as Maher. Abbie really had a sense of humor that was spontaneous. And it was based on being well informed. Bill Maher was doing that. He was rabble-rousing. He was trying to let people know how serious it was.

EP: I can't help but feel such sadness that Abbie is gone. You mentioned Shepherd as an influence, for me it's Abbie, who I regret never knowing personally. You read his books and every page glows. He's such a wonderful soul and gifted writer. Do you recall going to rallies with Abbie?

PK: I remember we had taken some acid in his home, and got a call that some Puerto Rican kids had gotten busted for pot. Abbie said "Okay, we gotta go there." Show them the hippies respected the kids who were busted. Because they were Puerto Rican kids. So, as we're walking there Anita, Abbie's wife at the time, mentioned she was going to regurgitate from the acid. And I said to her, "You can just vomit over by the curb over there, and we'll stand around you." That we'd hide her. Abbie said, "Now *that's* community!"

There were lots of things like that. We saw a police car, full of four cops, two in the front and two in the back, and Abbie yelled, "You guys on a double date?"

I told him he reminded me of Lenny, and he said, "Oh *really*? He's my God!"

EP: That's an amazing story, partly because there's no way you can talk like that to police now without being confronted. I have this terrible habit where I thank cops. I got tackled once because a cop thought I was someone else, and, partly out of fear, I thanked him. I always feel like an asshole when I do it, too.

PK: I did the same thing (laughs) when they frisked me. They frisked the reporters because they didn't want the reporters to have guns in court.

EP: Was this for the Harvey Milk trial?

PK: Yeah.

EP: During that trial, you coined the phrase "The Twinkie Defense". You've done this a couple of times, creating an expression or a term, that becomes a permanent part of the language.

PK: I once started a list: Yippies, Twinkie Defense, jilling off — that's a woman masturbating, instead of jacking off.

EP: "Soft-core porn," you coined that.

PK: Yes.

EP: What do you think Robert Anton Wilson would say about Trump?

PK: He would be very analytical about him. You know, he would talk about the insanity of it. He would just get to the core of Trump. He'd be fascinated by it.

EP: He does like "mind fuckers."

PK: Exactly, yeah. He would be a great analyst of how we all have some narcissism in us, but Trump is the king of — oh, you know I'm doing now what you did — when you made up what you think what I would have said, there. And now I'm saying what Robert ... what Bob Wilson would say.

EP: But that's totally correct, I think.

PK: But he would, because — there was a European order of priests who got married, or something like that. And I gave Bob the assignment of writing about that convention of the priests, as if he was there. He loved doing that; he made it seem real.

That was a very good form of his satire, because once again, it was not *only* possible, it was probable.

EP: What about Terry Southern? A lot of people see *The Magic Christian* happening right now with Trump — Trump is living out that description of the book. He's "making it hot for them."

PK: Terry Southern was — he put a lot of words in italics when he wrote. And he talked the same way. He talked with italics.

EP: Maybe he'd italicize Trump. Finally, how do you think George Carlin would respond to Trump?

PK: He might make a list. George loved to make lists. He could make a list of lies, of Trump's lies.

EP: Paul, this has been so good talking with you. Any closing advice to Donald Trump, if he's reading?

PK: I got my philosophy from [the comic strip] *Mary Worth*: "When in doubt, do the kindest thing." **B**

[1]See *The American Bystander* #1, Dec. 2015.

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The text of the television interview of the Deputy Crown Prince: Prince Mohammed bin Salman:

The Prince Mohammed bin Salman bin Abdul Aziz, the Deputy Crown Prince, the Second Deputy of the Prime Minister, and the Chairman of the Council for Economic Affairs and Development, has held a television interview on Saudi Arabia's first channel for the most important local and regional issues, and he stated the followings:

* The national transformation program was designed to improve the performance of government agencies?

- That's true, and for this reason there are indicators and targets have entered in 24 government agencies, the second batch will be launched in the near future or the coming weeks, and there are new entities, that were not included in the 24 parties in the national transformation program, will be added to it.

* Now it is been a year since the establishment of 2030 vision, How do your Highness see its impact on the growth, the unemployment and non-oil income?

- I think that it has achieved so many achievements. If we look at 50 thousand feet, we will find that the deficit rate is less than all analysts' anticipation, both at home and abroad for 2015 and 2016. And also for the budget of 2017 we will find non-oil revenues almost doubled in these years, "the last two years from nearly 111 billion to nearly 200 billion Saudi riyals. We will also look at the fact that budget control has become much more accurate than a budget in the last year, which spends more than 25 % to 45 % to a budget where only less than 10 % is spent. All of which are more than 50,000 feet. In addition to that, the main economic indexes have been affected by eighties, the nineties, and 2009 fall in oil prices such as the unemployment index which increased in those sharp declines, while the inflation index rose very significantly. The investment index also fell very strongly, while in this crisis the oil prices fell very sharply in an unprecedented manner in the history of the Kingdom of Saudi Arabia and in a very rapid pace until it reached 27 dollars in a short period, and continued at this abysmal level for a year and more than a year. But, thanks to God, thanks to the guidance of his majesty the king, and the work of government agencies and officials and government employees who were able to maintain a lot of indexes without being affected negatively. Unemployment was maintained at its level and was not strongly affected negatively. Inflation was also not strongly affected negativly as the historical cases we have seen in the past. The investment index was not affected strongly and the growth index continued to rise on the GDB. It is true that it is below the global average but we have not entered a stage of contraction in the Saudi economy. Now the effects of these programs that will be launched will start to appear in late 2017. We will find their very strong impact starting from 2018 and 2019 on all these key economic indexes.

* Your Highness, Prince, with regard to the issue of unemployment from the beginning of this year and with the recession that the local market suffered, there was a layoff for people from their jobs, what is the plan for that?

- As everyone knows, that any reform process and any screening process of the country will be accompanied by side effects. It is very normal with the oil drop to $ 27 and its continuation for a long time less than $ 40 have a lot of symptoms affecting the state spending. These ten programs are all in

the different areas of spending between investment and spending from the private sector, which is a major incentive for jobs in the coming years. As everyone knows, the aim of Vision 2030 is to reach a 7% unemployment rate in the Kingdom of Saudi Arabia. With no doubt, these programs will make us into a better number than we are today in 2020.

* What is the reason for the suspension of allowances, and why they were returned?

- If we note, in the decision to stop allowances that it was temporary, and that in the same resolution there is a text that states that the decisions are reviewed periodically. And they were reviewed appropriately after the improvement of our oil revenues. This is a factor, and as you know in the program "financial balance" we had three scenarios for Oil which are: the pessimistic scenario $ 45, the average scenario or a baseline of $ 50, and the optimistic scenario of $ 55. This is not the Kingdom's assessment for oil, but this is to arrange our securities with different oil prices. In the first quarter, we were close to the optimistic scenario which is $ 55, sometimes we go beyond it and sometimes we are less than, this is a positive element. The other positive element is that our non-oil revenues in the first quarter of 2017 have achieved more than we anticipate to achieve. This is another positive element, so the decision is no longer has to continue in this manner. So that, it was reviewed as stated in the resolution itself, while we exaggerate that this is a very great success for the competent authorities in the financial and the economic and investment sides as they were able to take us from this stage in less than 8 months. The work of a very great effort has been done in the oil agreement with the OPEC countries and non-OPEC countries is an agreement for the first time in history. We have always known in the past that the agreements were held between the OPEC countries only, and this is the first time in the history that the agreement held between the OPEC countries and countries outside OPEC. That made our position is very positive in terms of the governmental revenues of the oil. Also, the procedures taken in these non-oil revenues have greatly helped in addition to the investments and restructuring of many of the sectors under the Public Investment Fund have contributed to bringing in these revenues which have strengthened our position and contributed to a decision like this.

* The amounts of allowances, were they so impressive that they stopped?

- When we notice the price of oil is $ 27 and continue for months under $ 40, we do not know what is the obvious scenario for the next three or four years, and we do not know if our effort in the oil agreement will succeed or will not work. Also, do not know if our programs in our non-oil revenues will succeed or not, we also do not know if that our investments will come to fruition in a short period of time or we cannot make a profit to help the government budget in a short period. So that, we can take “the risk” at the expense of the national economy. These procedures have been done in the past, in the eighties and in 1997. But the difference between this period and the past periods is that we took a period of few months to went back to the normal position while in previous cases in our history and the history of other countries take years to return to normal course.

* I mean the size of the amounts Was it affect the support?

- without doubt. If you want to close all the taps that you have, you must take all measures until make sure that your affairs are in a good position, and then re-open it as appropriate.

* How do you respond to some Western press, which said that this decision came under popular pressure, and this is considered a decline?

- That is incorrect words, the deficit fell in the first quarter to 44%, this in itself proves the truth of our words that the deficit falls below what we expect, so why continue the austerity measures.

* What are the most important steps that achieved compensation in the budget deficit?

1- Oil revenues are the most important factor, and the main reason for the oil agreement.

2- There are some procedures that have been implemented in the non-oil revenues in the last two years.
3- Revenues of the Public Investment Fund. And for the first time the Public Investment Fund enters the treasury of the state tens of billions annually which is 2015, 2016, and 2017 God willing and in an increasing manner.

These are the three most important factors that made the deficit fall to 44%.

* What if the price of oil falls below $ 30?

- We expect the second, third, and fourth quarters will not be below the 44% expectation because we are back and spending again.

* What if oil returned and fell below $ 30, would we return to austerity and tighten the belt?

- Without a doubt, if we go through a critical stage we will return to the austerity measures, but what we are working on today and the initiatives that exist today will make us stronger in the receipt of shocks. And if our initiatives succeeded, we will need oil prices less than fifty dollars. This will make us receiving very strong shocks without the action of tighten the belt.

* After the return of the allowances. People began to look at the citizen account that it will not be completed?

- The unified account of the citizen is to compensate the citizen for any rise in the prices of energy, water or the like so that the citizen of the middle income and less does not affected, and the impact is on the rich foreigner or citizen. Today we want to redirect the support to be materially directed to the citizen. Middle-income or low-income earners decide to spend the amount they have spent in the past on the same expenditure (energy, water, gasoline, or other goods), or reduce their consumption, and spend that amount in another thing.

* About 12 million citizens have registered their information. Have you started benefiting from that?

- Now, we believe that those who deserve support are less than ten million, or nearly ten million, and the competent authorities are working to determine the final form.

* Do the ten million include the poor and the average?

- Of course, we are trying to be as generous as possible, and trying to include the largest possible categories, even if they are above the average. So that it has a strong impact on the Saudi citizen, but to date the details has not finished yet, and the competent authorities are working on it, and is supposed to be finished in the coming months.

* How will you deal with future unemployment, is there a number you have?

- If you notice in the 10 programs that have been launched, that it is required from each program when it is announced in the next six months to measure its impact on the main indicators of the economy, including the unemployment index. In the next six months, we will see the impact of each program that is launched on the unemployment, how would this program will provide number of jobs, and how many percent will affect unemployment. We expect that the impact of these programs will be very strong to

reduce the unemployment rate, and I can only give you the real impact at the time of the announcement of each program.

* How much do your highness expect the anticipated increase in the public debt in 2017/2018?

- Public debt as announced in the fiscal balance program will not exceed 30%, we target the public debt on the GDB 30% and so far, we have not reached 30%. There are some expectations that even in 2020 we will be less than 30%. A public debt of 30% does not mean a problem, some of the countries in the world have GDB in some of them up to 50%, some up to 60% and some up to 200%, including G20 countries. If we look at the big countries, the five major economies have more than 30% public debt. So that, it is healthy for the Saudi economy to involve a percent of public debt, which means that we have opportunities for development programs on which we spend money. We have two options: to spend and continue to develop, to create jobs, to create opportunities, to create private sector opportunities, or to stop spending. Our public debt is very low, giving us a comparative advantage that we can rise to international rates and continue to spend.

* How do you see the future of the Public Investment Fund over the next three years? Would it be an internal or internal and external investment?

- The Public Investment Fund is one of the most important pillars of Vision 2030. We have several opportunities to develop the size of the Public Investment Fund:

1- Unutilized assets. Too many assets have been entered, some of which may have been reviewed or announced to the public investment fund. These will be reflected in the size of the fund, the size of the value of the fund, and the profits of the fund.
2- We have heard that some of the reserves that are not of the state's funds need to be transferred to the public investment fund, about 100 billion riyals several months ago. Also, there is a restructuring of the public investment fund companies so that their performance, growth and profits are better than the previous. All of these will maximize the size of the Public Investment Fund, on top of this the offer of Saudi Aramco.

* His Highness the prince, What about Aramco?

- As we state, the most important offer in the Public Investment Fund is the ARAMCO offer. This will provide huge sums to the Public Investment Fund and also it will help in targeting many sectors inside and outside Saudi Arabia. One of the most important sectors to be targeted by the Fund within Saudi Arabia, is the mining sector. According to the survey of the 1970s, which was re-examined last year, I think there are mining opportunities of (Trillion and three hundred billion US dollars). The value of minerals in Saudi Arabia, of which gold is more than 240 billion US dollars and that requires a very huge investment. It is always difficult for foreign and domestic investors to take risks in a new sector such as mining. Consequently, the investment should be through the Public Investment Fund. The company of Aramco contribution with part of the money (cash) in the fund will provide the Fund with the ability to invest in this new sector, which has now only utilized less than 3%, and we have another very important goal which is the local content target. Today's volume of Saudi Arabia purchases outside the Kingdom of Saudi Arabia on goods, commodities, activities or so on, amounting to US $ 230 billion. According to the vision of the Kingdom of Saudi Arabia 2030, half of this spending will be within the Kingdom, and when we talk about what are the most important local content items ($ 230 billion), the most important item is Military manufacturing, which ranges from $ 50 to $ 70 billion a year, sometimes increases, sometimes less. We are the third largest country in the world to spend 99% of the military armament outside the Kingdom. This is a huge opportunity to create large industries within the Kingdom, also to

create jobs and create development. However, what distinguish this matter is that the decision is 100% totally owned by the government. The government today has made a decision requiring that any industry should be linked to local content (i.e. I will not buy from you unless you tell me how much you give me local content). There are types of industries, low-sensitive technology industries and in this case other countries do not have the embarrassment of being transferred to you 100% inside Saudi Arabia, such as light weapons or ammunitions or what can be included under it or spare parts or structures, etc. And there are a medium-sensitive technology industries, some countries have a certain sensitivity, we try to get out of the deal a certain percentage for the local content, and sometimes we manage to reach 70% of the local content, sometimes 50%, and sometimes 20%. There are also complex industries that countries refuse to transfer technology to Saudi Arabia. Here, we stipulate that the main materials are through Saudi Arabia, which has an indirect impact on the local content inside Saudi Arabia, but the condition in the competent authorities in Saudi Arabia today is that no weapon deal without local content targeting 100 % of industry transfer. If we do not succeed we must end up in 2030 with 50% local content. This means that from 50% ($ 70 billion) will be spent inside Saudi Arabia in 2030 and will gradually increase. His Highness has pointed out that today there is a range of armament deals will be announced in the coming period. In each deal, we will know how much the local content is, and how many job opportunities will be provided by it. Arming is the largest item in the local content. The second item is the automotive industry, where car purchases by the Saudis are almost $ 30 billion a year, sometimes higher than and sometimes less than. The positive element is that $ 13 billion of these purchases are purchases for the Saudi government and we can start with the first stage is to provide the needs of the Saudi government through Saudi manufacturing companies that the Saudi government is contributing to. This will bring us 40% to 43% in 2030 in the automotive industry.

* Will there be a localization of the automotive industry?

- We will not try to offer goods to the citizen in the next ten years as cars, it will be very difficult to compete in prices and also to convince him of the quality required, but we can ensure that these deals for the government in exchange for creating this industry within Saudi Arabia, and the third most important item of the local content is entertainment and tourism (22 billion dollars a year out of Saudi Arabia on entertainment and tourism) This is the most difficult item because its decision in full to the Saudi citizen and there is no part of the purchases with the Saudi government, it is very difficult that you invest in an investment convince the Saudi citizen that instead of spending this money outside Saudi Arabia to spend it inside Saudi Arabia. Also target 50% in 2030. Under the local content, there are too many items, this (230 billion US dollars) of which we are targeting US $ 115 billion to be spent annually in Saudi Arabia and increasing gradually after 2030. Hence, until reaching 2030, these are all challenges and profitability in it are not as expected or as required and the risk is very high, no one will invest in it except the Public Investment Fund so that this sector succeeds and then privatize and sell in the stock market then Companies are listed in the stock market and the fund starts to recover its expenses and enters into another chance. This is the second sector targeted by the Public Investment Fund after mining. The third sector targeted by the Public Investment Fund is the logistics sector. We have three very large logistics opportunities and we operate very strongly. The most important opportunity is the Red Sea. 13% of the world trade passes through the Red Sea and Saudi Arabia provides nothing at this field (zero services), and here are huge opportunities to work along the Red Sea for many exports and imports of countries. We began today to work with many countries since the recent time headed by

China and now we work with them on a huge initiative in the Industrial city of Jizan and there are other countries come successively.

* Does this will include the development of ports?

- That is true. developing seaports or participate in the industrial cities on the Red Sea. Another opportunity we're working on is a Saudi and Gulf states exports to Europe, 40% of Saudi Arabia and the Gulf states exports to Europe. Especially, the Gulf countries pass from the Arabian Gulf to the Strait of Hormuz to the Arabian Sea to Bab El Mandeb to the Red Sea to the Suez Canal to the Mediterranean Sea and this period takes the cost and security risk, while we can provide them passage through Saudi Arabia directly to the bridge of the King Salman, who announced it last year to North Sinai, which reduces the time and cost. Where security guarantees are much higher than those in which they pass.

* Are you involved in the King Salman Bridge project?

- Without a doubt, this will create a lot of industries and businesses inside Saudi Arabia from connecting roads, connecting power grids, linking gas and oil pipelines, and connecting railways to North Sinai. The third opportunity we aim at in Logistics is aviation, today our brothers in the United Arab Emirates and in Qatar have done a very good job of flying in the Middle East, while they do not have a strong domestic market to rely on to take over and control the Middle East markets. Saudi Arabia has the largest domestic market as an airline market. Saudi Airlines companies should have a much larger stake in the Middle East Airlines today, this is also the third aspect we seek.

* What are the reasons for the absence of the Saudi aviation, is the weakness of the airports is the reason?

- The absence of strategy, there is no strategy and no vision. The tendency was a random move until we reached the stage we reached today, while if you set a goal and plans to reach this goal there will be an achievement of these results up to 100% or 50% or 30%. Briefly, the fund will be the main driver of the major sectors within Saudi Arabia. The fund will have a very large cash flow from Aramco and this will be directed in no less than 50% and up to 70% in new sectors within Saudi Arabia (mining, local content, logistics). After covering opportunities within Saudi Arabia, the remaining 50% and 30% will be directed to outside Saudi Arabia to the promising sectors that are possible to be in the forefront ten years from today, and. Details for all of this will be announced in the launch of the program of the Public Investment Fund in accurate and detailed manner.

* When the project was announced cash; people reacted that they wanted the habitation, what the opinion of Your Highness?

- We have so many fronts we are working on them, and we cannot then stop a certain entity that achieved an achievement because there is a delay in the other side. It will disrupt the work of the whole government, it is imposed on all sides to support, stimulate and reach an achievement, and the one that is delayed is to be investigated about the delay and its reasons and how we work on it. This is a side, the other side that spend on the public investment fund is not the state. It is one of the fund's unexploited assets. In the past, it was giving us a profit of 1%, and at the best case 2.5%, and there are bonds and funds outside the Kingdom of Saudi Arabia. Today, we transfer these amounts to Saudi Arabia and we invest in sectors that give a profit of better than 2.5% or 1%, develop key sectors and contribute to the local content on the entertainment side. Ultimately, this will create profits for the Fund, the Fund will

turn it to the state treasury that will make the state position more powerful so that it covers more expenses of "housing and other expenses" that the state need. In addition to creating job opportunities that contribute to solving many of the problems of Saudi citizens, as well as they contribute to the development of the private sector.

* Among the programs that were presented last Sunday the housing program and there was a reference to three solutions. What is the vision of Your Highness through the program to the issue of housing?

- We are optimistic and we expect the situation for us is more positive than we thought, there will be hundreds of thousands of free units in the housing program, there will also be more than one million units in soft loans for Saudi citizens. The first will be without payment for hundreds of thousands of units and there is no specific number, and the accurate number will be announced at the time of the launching of the housing program, but there will undoubtedly be more than one million units sold by the facilitator or loan from the Real Estate Development Fund, the Real Estate Development Fund will contribute to lending and also the easy sale, the Public Investment Fund will also contribute to the housing sector.

* Will the fund return to its previous role in pumping money?

- The Real Estate Development Fund is undoubtedly one of the main drivers of the development of the housing sector. We have three types of housing. The first one is the free one, hundreds of thousands, I cannot give you the final number. The second one is the housing supported by the real estate development fund. Third one is the housing from the main investor which is the government and it sells easily and at a discounted price to the Saudi citizen. This is a very long-term loan whose profit to the fund is only 3%, while the citizen can own his unit on the second day and he can pay for many years without affecting his main income. Not to mention, the free units as large as possible to citizens who cannot cover the costs of housing programs.

* When Your Highness is expected to start the project launch?

- Imposed within 6 months, I do not expect it to be one of the first programs to be launched because it is very complex and has very high spending, I expect it will be launched in the third quarter of 2017.

* Your Highness the Prince, there is a fear haunt some economic writers about Aramco and that it is the property of the state and that it should not be offered for subscription opinion. What is your opinion?

- I think that this thought tends to be communist socialist thought that everything must be owned by the state even the bakery must be the property of the state. Fundamentally, there was an intention to put Aramco on the market, and that had been stated in the main documents in which Aramco was established under the reign of King Abdul Aziz - may God have mercy on him – at that time. Today, you have a very valuable company and you can keep this company in the Kingdom of Saudi Arabia, keep its impacts in Saudi Arabia, and make it grow in Saudi Arabia, while benefiting from its value by stimulating other sectors that are not in Saudi Arabia. This will help us capture many opportunities like we spoke at the beginning of the interview. If you did not put Aramco on the market means that we will continue 50 years or 40 years to develop the mining sector, it will take 40 years for us to develop local content, and it will take years to develop logistics services, such as what we lost 40 years ago while we were trying to develop these sectors. When we offer part of Aramco's shares and take this cash and create new and

strong sectors in Saudi Arabia, we will develop the economy, create jobs, improve government and fund revenues and other benefits, and at the same time Aramco still in the Kingdom of Saudi Arabia.

* How much will you sell, what is the percentage?

- There are two main factors to determine the percentage of the offering.

* What will we sell? Is the service, wells, or what?

- We sell the value of the company, while wells are owned by the state, only the company has the right to use these wells, which is in the past and still at the present and has not changed anymore. The size of the quota to be sold is governed by to two factors, one is the demand, is there a demand or not. Second, what do we have on (Pay Plan) as investments in or outside the Kingdom of Saudi Arabia. There was a request, but we need the cash. Because we do not have a sector that invests in Saudi Arabia or absorbs this investment, why do we sell a stake for Aramco, but if there is a request and find a sector that needs this investment, the second day we will sell. This is the two factors that will determine how much we sell from Aramco, but undoubtedly will not be far from 5% too much.

* When will the Aramco project be sold?

- 2018.

* Do you now work on papers and permits?

- That is right.

* If Aramco is sold. Who will determine the ceiling of Aramco's production?

- Determination of the production ceiling would be the prerogative of the Saudi government, increasing the production at the price that suits the company is in favor of the Government of Saudi Arabia. A part of the governmental revenues is from the oil tax (50%) on the oil sold or produced, as well as the taxes it receives from Aramco. The government's interest is to develop the profits of Aramco, meaning that the government will not take a decision that violates its interests and the interests of Aramco in the rate of production.

* Your Highness the prince, the subject of production with the economic vision and mentality in the market, will the production be freed from the political decision?

- Production is not a political decision, production is an economic decision, it was not a political decision at all in the past, production is an economic decision, what is the economic benefit to determine the appropriate production price, this is governed by supply and demand and coordination with OPEC countries and countries outside OPEC to coordinate the amount of supply and demand so that there is no collapse or confusion in oil prices.

* One of the programs that have been launched last Sunday, is the investment program to stimulate 100 companies to turn either to regional or to international companies, what are the companies targeted to raise their level?

- I cannot name companies now, there are companies where part of them is in the stock market and companies outside the stock market. We acquire more than 100 companies that have the opportunity to turn from a local company into a leading regional company. We also acquire companies that have the opportunity to turn from a leading regional company to a leading global company, and we have a group of companies that can achieve this transformation and this huge impact that will be reflected on the Saudi economy. They need easy procedures, facilities and agreements with other countries, facilitate their sales, and facilitate their spread.

* Will the government negotiate on behalf of companies and take care of their interests?

- Undoubtedly, we can touch that all the governments of the world are doing this. The last of which was few days ago when we had the German Chancellor with the managers of the most important companies in Germany, and she was negotiating as if these companies are belonging to the German government, she also was entering in all the details for the success of the work of these companies. The Saudi government should play its role to turn the success of Saudi national companies. This will transform 100 Saudi companies from local leading companies to regional leading companies and from regional leading companies to global leading companies, and also this will provide us with experience in how to turn these companies into large ones so that after 2020 we operate programs targeting a wider range of these companies.

* Does this mean that the state can lend them?

- it may be according to what will be announced in the program.

* Private sector now complains of high operating costs, and believes that this will become harmful to the industry and in trade, what is the opinion of Your Highness regarding the high prices and the shrinking economic situation?

- I do not think this is accurate, but the programs that will come out will stimulate the private sector very strongly. Sales of the private sector will increase very strongly. If you spend hundreds of billions in a short period of time, this will undoubtedly have a very positive effect on the private sector. I would like to give you an example. In the past, we used to rely solely on government capital expenditure. Nowadays, in the coming years, we will have high government capital spending, that is the first thing. The second: there will be spending from the reserves mentioned in the fiscal balance program is 200 billion riyals for private sector development, this spending differs than the capital spending we are all used to. Thirdly: and it is important- it is the spend of the Public Investment Fund. The Public Investment Fund will spend in Saudi Arabia, after Aramco has been sold, more than SR 500 billion in just three years. You can imagine this spending in the military industry, the automotive industry, the entertainment industry, the tourism industry or in other industries. How will it affect all of the private sector, and this will stimulate their sales in very strong manner in all sectors, both in the retail, transport, services sector and so on.

* Will you impose taxes on corporate income?

- No, this has not and will not be mentioned in the program of financial balance. We mentioned that there would be no taxes on wealth or any taxes on income.

* Companies coming to Saudi Arabia, Are there facilities for foreign investment?

- That is true, today, the Ministry of Commerce is working on screening the work of the Investment Authority. We worked different than what was happening in the past of waiting for the demand comes from the companies, but today we pick up the companies that we want to work in Saudi Arabia. There is a very long list of companies that the Investment Authority must seize each year and enter them in the Saudi market.

* Is there anyone who wants to enter but complain about the procedures we have?

- This is true, and they are all easy procedures and contribute very significantly to the work of these companies. For example, remind you the last event in the visit of German Chancellor, the German companies have had a problem that our license in Saudi Arabia only lasts for one year, while their strategies and investments are based on four years. They have been given a change in this aspect so that the license lasts for five years, this are easy procedures that greatly stimulate the work of foreign companies in Saudi Arabia.

* With respect to the health sector, it means the privatization of the health sector, it was published on the lips of the Minister in a symposium that the hospitals will be privatized, and then it was said that it

will become some state-owned companies, what is the reality of the privatization of the health sector, and how it will be, and other important sectors?

- The health sector is privatized in all the successful globally countries. If we look at the United States for example, we do not find the US government owns hospitals, each hospital either owned by the private sector or non-profit sector. The role of the government is to guarantees a free treatment for Saudi citizens. Instead of we occupy a hospital and we spend on them and come at a quality that will be rejected by the citizen, we privatize and owned by companies and ensure the policy of insurance for every citizen. And the citizen has the choice of selecting the hospital which he wants to get the treatment in, whether private sector or non-profit sector. This will bring great competition to all private hospitals and provide quality services so that they attract this citizen who has an insurance policy and earn more profits, and it will create a better health sector with better services and much less corruption. Because it became some interests among stakeholders and it will ease the very high load of management for the Saudi government. It will also reduce the costs that the Saudi government spend on the health sector, while these expenses will be spent in other sectors that are in need for these expenses.

* When does this wheel start?

- It is a very complex project, we expect that things will be clearer during the current year.

* What are the other sectors that can be privatized in the near future?

- The municipal services sector, also the transport sector, primarily airports, aviation and ports. Those are the main sectors that we are targeting at this stage.

* In the subject of vision, your Highness has mentioned that there will be an increase in the number of those wishing to perform Umrah and Hajj through the preparation of the two Holy Mosques and its facilitation. But Muslims in Pakistan, for example, or from other countries or Muslims residing here, believe that the fees will affect so that the turnout will be decreased, and instead of having a person four times of Umrah a year, he will perform it one time?

- This is an incorrect propaganda, and we know who is behind it, which is a loathing of Saudi Arabia. It hates the interests of Saudi Arabia in one way or another and tries to seize any opportunity to alienate the Muslim peoples from Saudi Arabia. First, before this decision, there were a fee for Hajj and Umrah of 50 Saudi riyals, even for who come for the first time should pay 50 riyals on the visas of Hajj and Umrah. This decision is not targeting the visas of Hajj and Umrah, but targets all visas of the Saudi government and to unite its price at one price. As awareness from the Saudi Government, in order to serve hajjis and pilgrims, the first Hajj and the first Umrah of any Muslim were paid at the expense of the government. If there is a Muslim wants to make the first pilgrimage, he will not pay the value of the visa, and the Saudi government will pay the visa. Also, if there is a Muslim wants to make the first Umrah, the Saudi government will pay the fees of the visa. But for those who are coming again for the second or third time, he firstly drains the Saudi economy and we served for the free first time. Secondly, he takes the place of a citizen in various Islamic countries wants to come for Hajj and Umrah.

* A minister has been exempted because of overrides and the abuse of power. Is this decision is for a activating the authority of corruption?

Custodian of the Two Holy Mosques King Salman bin Abdul-Aziz Al Saud - may Allah protect him - has made changes from the first day he took the judgment, sensing the importance of the role of the authority if corruption. And also, his dissatisfaction with the role that the Authority of Corruption are playing. If the fight against corruption is not at the head of power that is meaning that you do not have the fight against corruption and you will not succeed no matter how you worked. I assure you that there will never be an exception for anyone who involved in a corruption case, whether a minister, a prince, or whatever. Anyone who convicted by enough evidence against him will be charged.

* Will social media networking contribute to detecting corruption if any?

- We must not take documents on the issue of corruption from social networking sites, where we cannot identify the counterfeit from the non-counterfeited, the real or the not real, and who has a special agenda of those who do not have a special agenda. Any Saudi citizen can be in his hand any documents of corruption or information linked to anyone or else and he believes that there is corruption, he can submit this document to the competent authorities headed by the Anti-Corruption Authority, and he must be confident that the competent authorities are in turn.

* You Highness the Prince, the open war on Houthi in Yemen, will it last?

- No one wants to continue the war.

* What is its future in your opinion?

- No doubt that when the war had there was no option for the Kingdom of Saudi Arabia, it is a must to do it, or the other will be the scenario is much worse. First his coup on the legitimacy by militias, that classified as terrorist militias and we a negative experience with them in 2009. Secondly, these Militias are forming a threat to international navigation, and all Yemen's neighbors. The third, the terrorist activity which began in the other party in southern Yemen are active in a very strong exploitation of the work of these militias, and if we waited a little danger will become more complex and will become dangerous within the territory of Saudi Arabia, within the territory of the countries in the region, and in the major international crossing points. So that, we have had no other choice. I think the Saudi armed forces have achieved very big achievements. When the operations began, the legitimate control was almost zero% on Yemeni territory. Today, the legitimacy controls 80 or 85% of the Yemeni territory, while another alliance was found in northern Saudi Arabia in Iraq and Syria to fight Da'ash, which controls part of Iraq. 60 countries led by the United States from 2014, that was a year ago before us, and until today they did not do anything. But, we are 10 countries in the region and we were able to achieve an achievement in a shorter time than the war in Iraq and Syria, this is an achievement for the Saudi armed forces, Yemeni forces, and alliance forces.

* As long as they continued to control the Yemeni territory, why legitimate authority does not move to Yemen?

- The legitimacy authority always moves between Yemen and Saudi Arabia and it has been in Aden for a long time and always avoid being the president and vice president are both in Yemen in order to mitigate the danger of the liquidation of Yemeni legitimacy, so they make steps in this way.

* There is a talk about a disagreement between Saudi Arabia and the United Arab Emirates about “El-Eslah group”, their role in the war, and the future of Yemen. What is the validity of this speech?

- Rumors are too many and certainly enemies want to create as much rumors as possible among allies.

* Why are the areas under the control of al-Houthi, a more secure and stable like Sanaa than the legitimacy areas in Taiz and Aden?

- I want the source of your information, and I am skeptical of this thing completely.

* Some reports say that the alliance intelligence reports are ineffective with evidence that Houthi and Saleh still have weapons stocks?

- We can uproot Houthi and Saleh in just few days, and we can mobilize only the Saudi land forces alone and in a few days, clear all areas and the remaining 15% under the control of Houthi and Ali Abdullah Saleh. But the result will be victims in our forces by the thousands, and we will open condolences in every Saudi city and the second result is the victims of Yemeni civilians in very high and very large losses. And the time is in our side, the long breath is ours. We have the supply, we have all logistical supplies, and our morals are high. While the enemy has no supply, no money, and does not have a long breath. Time is in our favor and we will take advantage of the time that is in our favor for us. If we do not take advantage of the time that is in our favor, we have served the enemy.

* There are proposals from Ali Saleh. cannot this be a way to isolate Houthi?

- Ali Abdullah Saleh has a very big disagreement with Houthi and we know that he is today under the control and the custody of Houthi, if he is not under the control of guardianship of Houthi, his position will be completely different from his position today without a doubt. If Ali Abdullah Saleh left Sanaa to another area his position will be quite different from his position today. Today, he may be forced to many of the positions he mentioned.

* He submitted an initiative when his son came at the beginning of the war, but you refused?

- That is true, that we were trying to make a political initiative that would make us avoid the war and we were opening a discussion line at that time provided that they did not approach Aden, because if they approached Aden, it would be very difficult to discuss a political solution, and Houthi was courting in Yemen. Unfortunately, nothing has happened as we hope and we have been forced into operations.

* Your Highness the Prince, there are forces that are neither belonging to the legitimacy nor the coupists. Why do not the kingdom open lines with these forces?

- All lines are open whether the forces belong to the legitimacy or force belongs to Ali Abdullah Saleh, or those who are not belong to both sides. And every day we are attracting more.

* Are the tribes of the northern Yemen concealed neutrality? You met with the tribes how do you see them today?

- There is no doubt that the enthusiasm was very high among them and all of them are very much hatred of the Houthi group and want to get rid of them as soon as they can devote to Yemen's development programs.

* I refer to the subject of Egypt again. The relationships with Egypt were excellent. Then the Egyptian media began to suggest that the relations were almost broken, what is happening?

- You mean the media of "Muslim brotherhood". The media criticizing Saudi Arabia or the Saudi-Egyptian relationship is the same criticizing President Sisi. The Saudi-Egyptian relationship has a strong and solid relationship in the deepest roots of the relations between the countries that are not affected in any way. In the history of Egypt and Saudi Arabia, they always stand with each other conditions and at all times. That situation did not change and there is no a situation of negative attitude of the Egyptian government towards Saudi Arabia, and also, there is no a situation of negative attitude of one of the Saudi government to the Egyptian government. Egypt has not been delayed for a moment to the Kingdom of Saudi Arabia, and Saudi Arabia will not be delayed for a moment to Egypt. This is a strong conviction between the leaders of the two countries, but also between the people of both countries. Without a doubt, the enemies of Saudi Arabia and Egypt will try to create rumors in one form or another, whether from Iranian propaganda or the media of "Muslim brotherhood" propaganda to cause a rift in the Saudi-Egyptian relationship, and the leadership of the two countries does not pay attention to these polemics and trivialities.

* Your Highness has mentioned the subject of King Salman Bridge between the Kingdom and Egypt. Do Your Highness bet on it?

- That is true, the working relevant teams have started working in the offices, not in front of the media the bridge after the bridge has been approved. The results will be announced when laying the foundation stone with full details, and the time of laying the foundation stone before 2020 without a doubt.

* The islands. Have you finished the subject of islands?

- There were no problems with the islands originally.

* We heard the Egyptian media speaks about the subject that within the corridors of the courts?

- which occurred about a year ago is only a delimitation of the maritime boundaries. The islands are registered with Egypt as a Saudi islands and they are registered with Kingdom of Saudi Arabia as Saudi islands. And are also, registered in the international centers as Saudi islands. Only the demarcation of the maritime borders has been done. Both Egypt and Saudi Arabia has not relinquished any part of their territories. The demarcation of the border came for reasons of economic benefits that could be created after the demarcation of these borders, especially the King Salman Bridge, oil supply, gas supplies, power supply or train and roads that will target the port in North Sinai, and the exports of Gulf countries to Europe.

* Is it possible to see in the future a direct dialogue with Iran, despite what it is doing in the region?

- How to reach an understanding with one who has the regime is firmly convinced that his system is based on the ideology of extremism enshrined in the Constitution and stipulated in the command of Khomeini that he must control the Muslims of the Islamic world and the dissemination of the doctrine of Jaafari-Ethna Ashry ethnic of them throughout the Islamic world until the Mahdi appears. How can I convince this person? What are the interests between me and him? When I have a problem with another state, we start to solve it. For example, if there is an economic problem there is a continuation of what you want and what we want and how we understand it. Or a political problem, for example with Russia how to cooperate in Syria. What are your interests and what are mine. How do we cooperate in

Yemen and what are your interests? How do we communicate with him ?! his logic is that the Mahdi will come and he must fertile the environment for the arrival of the Mahdi and they must control the Muslim world. They deprive their people for more than thirty years of development and put him in the stage of hunger and poor infrastructure to achieve this goal, they will not change their mind on the day and night. Otherwise, their legislation will end within Iran. What are the points of convergence that can be discussed with this system! They are almost nonexistent. This system has been tested at more than one stage, in the time of Rafsanjani and it turned out to be just plays. After the Khomeini revolution, the strategy of expansion came to anger the world and then the leader of the peace who was Rafsanjani until he gained the confidence of the world, including us, he gained our confidence. After reaching another stage and a good environment, an extremist leader is sent to continue the process of expansion, such as what we saw with Ahmadinejad in Iraq, Syria and other locations. Then another leader comes to preserve the gains to satisfy the world. And then an extremist commander comes in order to continue the deployment of expansion, this will not happen, this is over. The believer is not bitten twice from a hole. We have been bitten once, and we will not be bitten again. And we know that we are the main goal of the Iranian regime, to access to the Muslim Qibla is the major goal of the Iranian regime. We will never wait until the battle occurs in Saudi Arabia, but we will work to have the battle in Iran rather than in Saudi Arabia.

* What do you think of the solution in Syria, how do you see?

- Syria is undoubtedly a very complex situation, no doubt that former US President Barack Obama missed a lot of important opportunities that could have made a big change in Syria. Today, Syria has become an international issue. Russia is present there and it is a superpower and a big country. The United States of America exists and all five major countries are there. Any friction that may occurs between these big powers could cause a crisis which is much bigger than the Middle East crisis, the situation is very complex. Today we are trying to make the most gains for the interests of Saudi Arabia, the interests of the Syrian people and the countries of the region.

From: [redacted] [redacted]
Sent: 9/13/2017 5:31:25 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

i m in my car at your door .. can i ring or 2 sharp?

Sent from my iPhone

On Sep 13, 2017, at 4:07 AM, jeffrey E. <jeevacation@gmail.com> wrote:

Wed at 2?

On Wed, Sep 13, 2017 at 12:26 AM <[redacted]> wrote:
hi habebey .. i m in new york .. the sooner we meet the faster i go back to be with my son on his first week in a new school ..
if you bussy dont worry i can wait until thursday ..
thnx again

Sent from my iPhone

On Sep 9, 2017, at 7:43 PM, jeffrey E. <jeevacation@gmail.com> wrote:

see you then :)

On Sat, Sep 9, 2017 at 6:42 PM, <[redacted]> wrote:
thursday at 6 pm? is that ok?

Sent from my iPhone

On Sep 9, 2017, at 7:40 PM, jeffrey E. <jeevacation@gmail.com> wrote:

when is good for you? late thurs? fri lunch whatever you prefer.

On Sat, Sep 9, 2017 at 6:35 PM, <[redacted]> wrote:
very well .. plz when you have a minute send me the date and the time .. i know the house by now👈

Sent from my iPhone

On Sep 9, 2017, at 7:31 PM, jeffrey E. <jeevacation@gmail.com> wrote:

of course

On Sat, Sep 9, 2017 at 6:30 PM, <[redacted]> wrote:
😂😂😂
are we meeting in new york?

Sent from my iPhone

On Sep 9, 2017, at 7:16 PM, jeffrey E. <jeevacation@gmail.com> wrote:

is this some sort of perverted question :) 12 american . of course

On Sat, Sep 9, 2017 at 5:40 PM, <[redacted]> wrote:
what is your shoes size if you dont mind me asking?

Sent from my iPhone

On Sep 9, 2017, at 4:30 AM, jeffrey E. <jeevacation@gmail.com> wrote:

I think trump cut the legs off your guy . He would like to take all the credit . If there is a deal or be seen to be strong on terror

On Sat, Sep 9, 2017 at 2:34 AM jeffrey E. <jeevacation@gmail.com> wrote:
See you I in. Ew york thurs?

On Fri, Sep 8, 2017 at 11:48 PM <[redacted]> wrote:
tamem just called mbs .. he want to sit and talk .. breakthrough

Sent from my iPhone

On Sep 8, 2017, at 1:33 PM, jeffrey E. <jeevacation@gmail.com> wrote:

I will get larson to call you

On Fri, Sep 8, 2017 at 12:26 PM, <[redacted]> wrote:
i will bring you some kuwaiti gifts but not food😉

Sent from my iPhone

On Sep 8, 2017, at 11:52 AM, jeffrey E. <jeevacation@gmail.com> wrote:

what is your schedule in new york how long will you be there?

On Fri, Sep 8, 2017 at 9:09 AM, <[redacted]> wrote:
things look very bad in the gulf .. my feeling trump do not want to end it

Sent from my iPhone

On Sep 8, 2017, at 2:28 AM, jeffrey E. <jeevacation@gmail.com> wrote:

your man did well . congragulations

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Robert Lawrence Kuhn

Dr. Robert Lawrence Kuhn is a public intellectual, international corporate strategist and investment banker, and a renowned expert on China. He is a commentator on the BBC, CNN, CGTN, CCTV, CNBC, Fox Business, Bloomberg, and other media; senior political/economics commentator on *China Global Television Network* (CGTN); and a columnist in *China Daily* and *South China Morning Post*.

For 30 years, Dr. Kuhn has worked with China's state leaders and advised the Chinese government. He spoke at the launch ceremony of President Xi Jinping's book, *The Governance of China*; he provided live commentary on CNN for Xi's policy address during his U.S. state visit (2015); and he introduced to foreign audiences Xi as "core" of the CPC (2016). He is interviewed extensively on US-China relations, including the trade war (2018).

For the 19th CPC National Congress (October 2017) and 13th National People's Congress (March 2018), Dr. Kuhn was interviewed extensively, including 24 times on CNN and BBC World News / BBC World Service, and he was quoted in newspapers and websites in U.S., Hong Kong, Italy, India, etc. His full-page, in-depth analyses of the 19th CPC National Congress were featured in *China Daily* to open the CPC Congress ("Historical Starting Point for New Stage of Development") and to close the CPC Congress ("New Era on the Road to 2050"). His essay at the opening of the Party Congress was published in *People's Daily*.

Dr. Kuhn is the author of *How China's Leaders Think* (featuring President Xi), and *The Man Who Changed China: The Life and Legacy of Jiang Zemin* (China's best-selling book of 2005). He wrote the Introduction for *Understanding the CPC*, the book series by China's ruling party, the Communist Party of China (2015).

Shanghai Media Group and Dr. Kuhn are co-creators and co-producers of the award-winning, five-part series *China's Challenges*, broadcast internationally (PBS stations in the U.S.) and in China. Dr. Kuhn is writer and host; Peter Getzels is director. *China's Challenges* won first prize in China News Awards twice (2013, 2018). A second season won an Emmy Award (Los Angeles, 2016). A third season (on "Xi Jinping Thought" and China 2020 / China 2050) is broadcast in late 2018.

Dr. Kuhn is the creator, co-producer and host of "*Closer to China with R.L.Kuhn*" on CGTN (China Global Television Network, co-created by Adam Zhu), the weekly series with unique access that features China's thought leaders and decision makers, broadcast globally and in China. *Closer To China* focuses on China's politics and government, CPC/Party, economics and society, reform and development, and international affairs and relations, with emphasis on Xi's policies and philosophy.

A special documentary on President Xi's "targeted poverty alleviation" campaign, co-produced by CGTN, Dr. Kuhn and Adam Zhu, is in production. Dr. Kuhn is host and writer. Peter Getzels is director.

Dr. Kuhn was one of only two Americans, with Henry Kissinger, named as the first "China Visionaries". He was selected by *Oriental Outlook* magazine (Xinhua News Agency) as one of the all-time, top-ten influential supporters of China's ruling party/CPC (he is the only one living).

An international corporate strategist and investment banker, Dr. Kuhn works with major multinational corporations, CEOs and C-Suite executives, in formulating and implementing China strategies by applying his "politico-strategic framework". He was president/co-owner of the largest middle-market M&A firm in the U.S. (sold to Citigroup in 2000).

Dr. Kuhn is creator, writer and host of *Closer To Truth* (produced and directed by Peter Getzels), the long-running PBS/public television series on science and philosophy (broadcast continually since 2000, over 275 TV episodes; more are in production). Dr. Kuhn is author or editor of over 30 books on China, corporate strategy, finance, science and philosophy (including, with the philosopher John Leslie, *The Mystery of Existence: Why is there Anything At All*).

Dr. Kuhn is chairman of The Kuhn Foundation which supports new knowledge in science and philosophy, classical music, and informed relations between the United States and China. The Kuhn Foundation produced the feature documentary "Khachaturian" on the life and music of the Armenian-Russian composer Aram Khachaturian, which won the Best Documentary award at the Hollywood Film Festival.

Dr. Kuhn has a B.A. Human Biology (Johns Hopkins); Ph.D. Anatomy/Brain Research (University of California at Los Angeles, UCLA); MBA (Massachusetts Institute of Technology, MIT).

CNN – Quest Means Business

Future of U.S.-China Trade Relations

Robert Lawrence Kuhn, August 27, 2018

HOUSE_OVERSIGHT_023667

CNBC

Squawk on the Street

US-China Tariffs - US-China Trade War

Robert Lawrence Kuhn, August 22, 2018

CNBC

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US and China have self-fulfilling prophecies on both sides for trade...

10:40 AM ET Wed, 22 Aug 2018

Robert Kuhn, China government advisor and "How China's Leaders Think" author, discusses his expectations for the next round of U.S.-China trade talks that begin today.

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Mornings with Maria (Maria Bartiromo)

US-China Tariffs - US-China Trade War

Robert Lawrence Kuhn, August 23, 2018

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BBC World News

President Xi Jinping-NPC Closing Session

Robert Lawrence Kuhn

March 20, 2018

HOST: Well joining me now from Beijing is Dr. Robert Lawrence Kuhn, advisor to the Chinese government and author of the book *How Chinese Leaders Think.* Thanks so much for joining us here on the program. Usually the NPC is seen as sort of a choreographed event: we know what to expect. But this time it felt very different. **RLK: It certainly was different. You have to look at this year's National People's**	

HOUSE_OVERSIGHT_023671

BBC

Congress - and the so-called Two Sessions - as part of the "political season" which begins with the party congress in October and goes now to the government sessions in March. And normally there is a predictability and what happens at the National People's Congress is not very significant.	
RLK: This year is different: China talks about a "New Era" – and this is not just words, it is really the case. If we look at the vision that Xi Jinping gave at the party congress, what we see here at the National People's Congress we see as the implementation of that vision across a very broad front.	

HOUSE_OVERSIGHT_023672

BBC

RLK: People have focused on term limits - understandably so - but the change is only for the presidency. Xi Jinping by having been made "Core" of the Party in October 2016 - actually with that designation undermined "collective leadership" - and when Xi's name was put into the Party Constitution as the contemporary arbiter of Marxism - on which the Party is based and the Party rules the country - he then became the overarching leader, no matter what position he would hold.

CNN International

President Xi Jinping, China, Term Limits

Robert Lawrence Kuhn – March 12, 2018

HOST: Let's talk about President Xi Jinping with our gues,t Robert Lawrence Kuhn, a longtime advisor to the Chinese government, the author of *How China's Leaders Think,* and the host of *Closer to China with R.L. Kuhn* on the China Global Television Network. Thanks for being with us.

RLK: Hi Natalie. Interesting day we're having.

HOST: Isn't it, though? So, I guess the first question would be to follow up on your book title, how China's leaders think. What is Xi Jinping thinking with this move?

RLK: First of all, we have to understand it in context. There are twenty-one different clauses in this Constitutional Amendment, and the whole point of it is to strengthen the governance system of China. Now China is a party-state system where the party controls the state. Everyone is focusing on the abolition of term limits, and it is important, but we need to understand the context within this party-state system. In October of 2016, Xi Jinping was made "Core" of the Party, which meant the collective leadership of the past was no longer operative; that X was, in essence, for the Party, the decision maker. Then just this last October at the 19th CPC National Congress, his name was put into the Party Constitution as "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era,"… it's a big phrase.

RLK: But what it means is that Xi is the arbiter of Marxism and party theory. That means in terms of being the Core ot the Party and the interpreter of Marxism that gives him ultimate power. He doesn't even need a formal position when has those two and the Party continues to run the country.

HOST: Is that a good thing? How can it be a good thing for the country when one person has the ultimate power?

RLK: There are two issues. One is how it happened: Now the abolition of presidential term limits coordinates with the Party and military, together the three largest positions. So they're now coordinated because he already had that power in the Party and the military.

Amanpour on CNN

President Xi Jinping, China, Term Limits

Robert Lawrence Kuhn – Minxin Pei

March 5, 2018

HOST: When it comes to trade, one country more than any other has been the target of Trump's rhetorical wrath, and that's China. But my next guest tells me that the promised tariffs won't bother China much, as we've been discussing. In any way, they in China are dealing with much more important things, like the proposal for the rubber stamp Party Congress which starts its new session today to change the Constitution, and lift all term limits on President Xi Jinping, effectively making him president for life. Now, I've been talking to Minxin Pei: he's a professor of government at Claremont McKenna College in California, and to Robert Lawrence Kuhn, who is the author of *How China's Leaders Think*, and he is the host of a show on the government-run CCTV news channel in Beijing. Gentlemen welcome to you both. Let me start by asking you, Robert Lawrence Kuhn there in Beijing. From the Chinese government perspective, these tariffs that the president of the United States has announced, how much does it concern Beijing?

RLK: Well certainly it's a concern, but I would call it a minor annoyance as opposed to something extremely serious. They have a lot on their plate here. The last thing they want is a trade war with the U.S., but they have to react. If the U.S. does something, there has to be something that they will do in retaliation. They will ratchet it down. They will signal, as you do, that they do not want to accelerate this, but to save face and to be appropriate, they'll have to match it. **HOST: To you Minxin Pei, how do you see this playing out?**	
MP: If the investigations find China at fault, or guilty of some practices, then the US has a wide range of options to punish China on a trade front. And if these things happen, then US-China trade war will take place. Another thing I want to say is that US-China relations have turned a corner. This is a relationship that has headed toward a long period of confrontation, and adversarial relationships. So what is going to happen on the trade front is part of a much larger picture of geopolitical rivalry, if not competition.	

Bloomberg

Bloomberg TV Worldwide

President Xi, China, Economy

Robert Lawrence Kuhn – March 5, 2018

HOST: You were there at the Great Hall of the People. What was your main takeaway from what some have described as Li Keqiang's impossible challenge: how to deleverage, how to take away stimulus, and still keep 6.5% growth?

RLK: I don't take the 6.5% growth as the primary objective here. I mean you have to look at what these National Peoples Congresses are. They're not setting the vision and the strategy. That was set at the party congress in October. What we're dealing here is the implementation of the policies. If you attend these every year you know they all look and sound the same because it's the same structure, same kind of structure of numbers, so what you do is look for the differences. What are those subtle differences between one year and another. That's what I focus on at these congresses.

HOST: What's the main difference you saw?

HOUSE_OVERSIGHT_023678

BBC World News
Xi Jinping and the New Politburo Standing Committee
Robert Lawrence Kuhn
October 25, 2017

HOST: We're going to put a question to Robert Lawrence Kuhn, who's a long-time advisor to the Chinese government. Robert, great to see you again. You were with us at the very beginning of the Party Congress and you were at the Congress today when it finished. Did you have any vision, any inkling that President Xi Jinping would take on so much authority? Also, what about the fact that there is no successor candidates among the new leaders? **RLK: I was interviewed in early 2012 by a well-known American television network and the question put to me, in January of that year, was, "isn't Xi Jinping going to be a very weak leader because he was not appointed by Deng Xiaoping and he has no strong base of support?"**	

HOUSE_OVERSIGHT_023679

CNN International

Xi Jinping and the New Politburo Standing Committee
Robert Lawrence Kuhn - October 26, 2017

HOST: The author of *How China's Leaders Think: The Inside Story of Past, Current and Future Leaders,* Robert Lawrence Kuhn is a longtime advisor to the Chinese government. He comes to us once again from Beijing. We talked this time yesterday. Good to have you back. And we discussed yesterday what we would learn about that lineup of the standing committee. It hadn't been revealed at that point that we spoke, but we now know and is it correct to say the most significant thing is no sign of a leader in waiting? **RLK: I think the most significant sign is who the people are and how they relate to each other. It's a group that actually respects traditional norms.**	
RLK: There was thought that Wang Qishan, for example, might violate norms by being on the Standing Committee after the traditional retirement age and that's not the case. There is balance among the member in terms of their geographies, even their political affiliations within the party which internally are important. Two are from Shanghai, two are from the Communist Youth League - one is actually from Shanghai and the Youth League as well but he's really from Shanghai - two have a long relationship with General Secretary Xi. And then of course General Secretary Xi has the overarching power as everyone says - and that is correct and will be correct for a long time to come.	

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CHINA'S COMMUNIST PARTY ALREADY ELEVATED STATURE OF PRESIDENT XI JINPING

Observers offer fresh insight for new era

Intellectual hails progress made in past while warning of challenges that lie ahead

By LI YANG
liyang@chinadaily.com.cn

"I like to understand new era in two categories: its characteristics at home and abroad, and its timeline."

Robert Lawrence Kuhn, investment banker and anatomy researcher

Q&A | ROBERT LAWRENCE KUHN

You hold multiple titles now. How have you managed to master so many different fields? Do they have anything in common?

There's one word to describe the commonality, that is "passion". Whatever I've done I want to have passion for it. To expand that a bit, it's the passion to learn. I'm not here to teach, I love to learn. When I write a new book, it's something I want to learn about. I use that vehicle to learn. So passion about learning is the common denominator. China has given me a hugely rich life because of everything I've learned here.

Robert Lawrence Kuhn has many titles, ranging from investment banker to anatomy researcher. But he is better known in China as a specialist who knows the country inside out.

Over the past 29 years, he has visited almost every provincial region and spoken with people from all walks of life, including some who have gone on to become State leaders.

"It's been a great gift to my life to be able to learn so much about China's rich civilization, political theories and the whole development," he said.

Kuhn, who is from the United States, learns as an outsider but communicates as an insider. In his talk show *Closer to China with R.L. Kuhn* on the China Global Television Network, he presents China's complex story to the world through candid, intimate discussions with the country's decision-makers.

In a hotel suite in Wangfujing, downtown Beijing, one busy lunchtime last week, Kuhn shared his thoughts on Chinese politics with China Daily, between exercising and a meeting of the Communist Party of China, which he had been invited to attend as an observer.

He spoke passionately about the 19th CPC National Congress, which was held in Beijing in October, describing it as "a milestone congress that set the agenda for more than 30 years".

The Party proposed two new concepts at the congress — "a new era of socialism with Chinese characteristics" and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, which has been written into the Party Constitution.

"To understand China today, it is critical to appreciate what the new era means. ... I like to understand new era in two categories: its characteristics at home and abroad, and its timeline," Kuhn said.

He has obviously developed his own way of explaining terms with Chinese characteristics. That is to break down the characteristics, domestically and internationally, rather than delve into the term.

He listed a number of challenges in China's new era, from pollution to medical care, among which he said the biggest is the rising expectations of the people at home, because "now that the people have some, they want more".

The complex international environment is the main characteristic of the new era, as the world is fragmented by diverse problems and challenges, he said.

While explaining what he called the timeline of the new era (2017, 2021, 2049) and expounding his understanding of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era — which he broke down into three categories: serve the people, national rejuvenation, and governance modernization — Kuhn showcased his knowledge of the Party's files, which he has clearly learned by heart.

He recited almost every key point of the 68-page report Xi delivered to the congress in October. More important, he made connections between these points, presenting them in a vivid way, seasoned with personal experiences and thinking.

When asked about the effects of the anti-corruption campaign, he immediately listed 10 objectives. That's his style of approaching Chinese issues — divergent thinking and a vigilance not to lose sight of the connections between different points.

From left: Zhao Jianguo, head of the international communication bureau of the Publicity Department of the Communist Party of China Central Committee; Jiang Qingzhe, Party chief of the University of International Business and Economics; China Daily reporter Andrew Moody; Guo Weimin, vice-minister of the Information Office of the State Council; speakers Robert Lawrence Kuhn and Liu Xin; Zhou Shuchun, publisher and editor-in-chief of China Daily; and Zhang Jiannin, head of translation and interpretation for the Ministry of Foreign Affairs, pose for a photo at the inaugural Vision China event on Monday at UIBE. | FENG YONGBIN / CHINA DAILY

British journalist tells China's story to the world

By LIU XUAN
liuxuan@chinadaily.com.cn

Despite living and working in China for a decade, Andrew Moody's ability to speak Mandarin is still at a basic level. Yet that has not stopped the award-winning journalist from interpreting China's story for the world.

Moody joined China Daily nine years ago and is now a senior correspondent. He has written more than 150 cover stories for the paper's European Weekly and African Weekly, examining a wide range of issues including the Belt and Road Initiative.

The job has provided him with firsthand experience of how China is developing as well as the chance to record reactions from the outside world, especially in the West, toward the nation's growth and changes.

He was at the Great Hall of the People to hear General Secretary Xi Jinping deliver a report to the 19th National Congress of the Communist Party of China in October, when the concept of a "new era" was first mentioned.

"The consensus of the various people I spoke to in the hours after the speech was that China's entering a new era could be a momentous turning point in world history," Moody said.

According to his interviews, he said, people believe that a more confident China is striding into a world that it also is helping to shape.

Moody has his own understanding of the new era. With 40 years of reform and opening-up, he said China has reached a point where it can move on in many ways, such as in foreign policy, global governance and domestic reforms. "China has reached a new junction and has to move forward."

The British journalist has written many stories that explain China to the rest of the world, and these have brought him many honors, including being named a State High-End Project Foreign Expert.

"I like reporting on China because it's perhaps the 21st century's most fascinating story," he said. "The real fun of reporting in China is the closeness to the actual story, the big fascinating story of China merging into the 21st century, the stories that maybe Western media don't really have the chance to interview."

Moody sees his task as communicating China to a global audience, and there are still a number of things that need to be done, he said.

"I go back to the UK quite a lot, and I still don't think that people are aware of the impact of a much bigger Chinese economy and China's being a more significant player in the world," he said. "All I can do is to report and do stories one by one."

"The real fun of reporting in China is the closeness to the actual story, the big fascinating story of China merging into the 21st century."

Andrew Moody, China Daily senior reporter

Q&A | ANDREW MOODY

How do you overcome the challenges of showing the real China to the world, especially to those who have biases against China?

It's a long-term thing, and you cannot change this overnight. There are negative perceptions about China. It's about engagement. If China has much more interactions with the rest of the world, then people will see China as it actually is. One of the 2035 objectives is to better increase China's soft power. Organizations like China Daily can actually play a role in improving China's soft power. But I do think it's a long-term process, and China doesn't need to be too sensitive toward criticism.

What they say

Vision China is the first high-end event organized by China Daily and UIBE after the two sides launched a partnership. By telling China's stories in an objective and rational manner, it aims to help students get to know a real China and an objective world, and to understand China in the new era.
Wang Jiaqiong, *president of the University of International Business and Economics*

I've learned a lot from Vision China today. What impressed me most is how to eliminate bias against China when telling China's stories. The three experts shared a common opinion, which is to show a true China and not care too much about comments from the outside world. The sincerest story is often the most touching one.
Zhu Yue, *a senior student majoring in international politics from Beijing International Studies University*

It was an interesting lecture. It was good to understand certain aspects about China. It would be good to have things like this abroad because it's about China. You don't have to explain China to the Chinese people, but you need to explain it to the outside world.
Nektarios Palaskas, *science and technology counselor for the Swiss embassy*

This event was very interesting. You invited distinguished speakers, and all of them are of global thinking and have a vision about China. China is booming, and everyone is interested. I enjoyed hearing the speakers' ideas about how China will be in the future. I came here with an open mind.
Ratthuwoot Nanthakuskool, *first secretary of Thai embassy*

Broadcaster sees choice and confidence in rising nation

By YANG WANGLI
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For 20 years, Liu Xin has had a singular goal: to build a bridge of understanding between China and the outside world.

The television presenter began working for China Central TV, the State broadcaster, in 1997, two years after becoming the first Chinese to take part in — and win — the International Public Speaking Competition.

Early last year, her desire to share China's story received a major boost when she was chosen to host *The Point*, a prime-time discussion show that airs weekdays on the China Global Television Network.

She said that China entering a new era means three things: opportunities, challenges and responsibilities.

"My winning speech in that 1995 national competition was about choice," she said. "After 15 years of reform and opening-up, we Chinese now enjoy an abundance of choice in our daily lives."

After listening to General Secretary Xi Jinping's report at the opening of the 19th National Congress of the Communist Party of China, Liu said she was impressed with his use of the word "confidence".

"It's the confidence China has developed through knowing that our system works. The confidence about who we are as a people, as a culture. And it's the confidence about our future role in the world," she said.

"As media workers, we believe we have a great story to tell. In the past, people relied on a few correspondents or experts for information and opinions on China. But more people are tuning in to Chinese media for information, both traditional platforms such as TV and online."

As more questions emerge in the minds of those watching from outside China, Liu said the opportunities to tell stories from inside the country are growing. However, so too are the challenges.

"Because of the ideological differences between China and the West, China has always been the subject of Western media criticism, which is often downright bashing based on falsehoods," she said.

Now that China has defied all kinds of predictions of a collapse or economic hard landing, Western observers are having a hard time explaining the China phenomenon, she said, adding that the result is an ignorance-based superiority complex mixed with bewilderment and need with jealousy.

During her 30-minute program, Liu conducts live interviews with guests in the studio or via satellite link to get a Chinese perspective on two to three topics that affect people around the world.

"I understand the urgency to be more assertive, but I believe we always need to be aware of the danger of putting feelings before reason, putting opinions before facts," she said. "Nationalism is my biggest enemy.

"President Xi has said we need to improve the quality and effect of development. I believe this also applies to China's international communication. The Chinese people will work hard toward a community of a shared future, regardless of how others view us."

Meanwhile, Liu has a job to do. "As a journalist, our duty is to tell China's story as it is, one topic at a time, one show at a time," she added.

"China has always been the subject of Western media criticism, which is often downright bashing based on falsehoods."

Liu Xin, host of *The Point* on China Global Television Network

Q&A | LIU XIN

As a professional journalist, what do you think China's mainstream media could do to better report China to the outside world in such a media transformation age?

It's challenging. I think we need to be aware of new technology. And the content is very important. If we're more confident, we can really be more sincere, be more at ease with our problems and our achievements. So let's have a sincere conversation, not shy away from the problems we're facing. That's why I say let's tell the China story as it is. It's not 100 percent about achievements. Every day we see mixed news, we have mixed feelings, so let's be factual, let's be sincere and let people decide whether they want to watch us or not. This is going to take time, but I think if we follow the right philosophy, the right steps, we're going to make it.

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OPINION

Power with purpose

Robert Lawrence Kuhn explains why abolishing presidential term limits may well be good for China

To interview delegates and officials at the annual National People's Congress in Beijing, interspersed with being interviewed in the international media about China abolishing term limits for its president, is to inhabit parallel universes.

Delegates and officials focus on clusters of issues from controlling financial risk and reducing pollution to scientific innovation and business stimulation, plus enhancing and institutionalising China's anti-corruption campaign with a powerful National Supervision Commission. The international media, no surprise, focus on the constitutional amendment ending term limits, assuming President Xi Jinping will now serve in a for-life dictatorship, reminiscent of Mao's China, the Soviet Union, the Kim family in North Korea and some African countries.

It is no challenge to explain why abolishing term limits is bad for China – dependency on one human being who is not omniscient but is hostage to fortune, fewer and weaker checks and balances, forced conformity in a complex society with no easy answers, etc. The system begins stronger in that hard choices can be made and consistency maintained, but it could become brittle in that officials are more wary and may say things they do not believe.

It is a challenge to explain why abolishing term limits is good for China, so that's what I will do.

First, some background. There are three separate issues being conflated: the significance of ending term limits, the intended consequences and the unintended consequences. Though terminating the two-term limit for China's presidency captures headlines, it is more the symbolic, final step ratifying Xi's near-absolute power than the big breakthrough itself. Xi's prior designation as "core" of the Communist Party in October 2016 and the inscribing of "Xi Jinping Thought..." into the party constitution in October 2017 were more meaningful.

Moreover, the Politburo Standing Committee, the highest authoritative body in China, unambiguously supports Xi. China watchers see the least page of *People's Daily* – published the day after the new Standing Committee marched out on stage – which featured Xi's photo on top, many times larger than the smaller, subservient photo of all seven members lined up on the bottom.

All this reconfirms that, in a system where the party controls the state – especially where the party is Marxist and ideology is its basis for being – Xi, as core of the party, with his name inscribed in the constitutions of party and state as the contemporary arbiter of Marxism, will be the uncontested, overarching leader of China for the rest of his sentient life.

For intended consequences, the official line is that the purpose is national cohesion brought about when the three top leadership positions – general secretary of the party, chairman of the Central Military Commission and president of the republic – are aligned temporally and held by a single person.

This makes sense, but as a primary, proximal motivation, it is not entirely persuasive. The current structure has existed for decades without outcry or angst to remove the idea that the three positions could be unified by installing term limits on the other two).

The "newera", marked by economic, social and global complexities, is said to require firm and consistent leadership, making most inner party struggles and even mitigating political gossip, facilitating focus on the tasks of governance and development. Specifically, because advancing reform has become more difficult with entrenched interest groups resisting change, the message is clear: you can't do it if you don't get with the programme, because you can't outwait or outwait Xi.

Because, it is said that only Xi has the vision, experience, competence and character to bring about "the great rejuvenation of the Chinese people", especially from 2020 to 2035 and ultimately to 2050 – bringing China to global centre stage – Xi's unimpeded leadership is deemed essential. China cannot afford "downtime" to accommodate a change of leadership, and after Xi's success at the 19th National Party Congress came the time to make clear that he will call the shots for the foreseeable future.

Some argue that doing away with term limits shows the superiority of the Chinese system as it allows flexibility in matching leadership to requirements (though what national leader, when extending his reach, has not claimed "current requirements" as justification?).

The party-run *Global Times* stated that ending term limits does not mean China has reverted to president-for-life tenure. (But who can deny that however long Xi holds the top positions seems largely up to him?)

As for the unintended consequences, the almost unanimous, disparaging foreign reaction – other than US President Donald Trump's – did not burnish China's international image.

More worrisome would be a reluctance by officials to offer constructive opposing views on central policies.

By stressing term limits, the international media misses fundamental changes going on in China – this year, innovation, streamlining of government, facilitation of business (cutting bureaucracy and reducing taxes), rural revitalisation and rural land reform. The 13th National People's Congress shows how the grand vision and mission of the 19th National Party Congress is translated into specific strategies and policies. If one sees only term limits, one cannot visualise the big picture.

As for Xi maintaining the presidency perpetually, it doesn't actually matter much – this is the deep insight of how China's party-state system works. Xi as core of the party and "Xi Jinping Thought..." as the party's (and now the state's) guiding principle means that Xi can transfer titular party leadership and/or the presidency to others and still maintain his overarching power. It may well be that, after serving two or even three more terms, rather than trying to find and install another leader like himself, he will move to bring about true democracy within the party.

Here's the best case. Xi will not be leader-for-life, but leader long enough to bring about China's national rejuvenation and establish a Chinese kind of democratic norms. Could Xi continue until around 2035, when China plans to have "basically" achieved full modernisation, heading towards, by mid-century, 2050, a "great modern socialist country"?

Many expect this experiment to end badly for China. It is indeed an experiment but its end is not set. It may be a race between achieving Xi's grand vision and some untoward perturbation that could cause fracture.

All factors considered, I am not saying abolishing term limits is absolutely good for China. I am saying it may be good – because of China's special conditions and Xi's special capabilities – but if it is good, it's just for this once, and it's just for so long. That's the best case. I'm rooting for Xi.

Robert Lawrence Kuhn is a public intellectual, international corporate strategist and investment banker, and China expert/commentator. He is the author of How China's Leaders Think

> Many expect this experiment to end badly for China. It is indeed an experiment but its end is not set

Private clubs deserve 'cushy' rental deals

Edith Terry says private recreational clubs are part of Hong Kong's heritage and have contributed to nurturing less popular sports, as well as a unique hybrid culture

In 1964, a young German, fresh off the plane at his first job, went in search of a social group. He found a home away from home in Hong Kong's oldest private recreational club, newly relocated from a prime location on Victoria Harbour, where City Hall is today, to a modest flagstone boathouse beneath Island Road on Hong Kong's south side. Fifty-five years later, Frank Pfeiffer, a Zen Buddhist and mountain climber, is still an active member of the Victoria Recreation Club, established in 1849. He has watched it ring the changes from Hong Kong's colonial society in the 1960s, when it had only two Chinese members and no female members, to the hybrid institution it is today, under its first Hong Kong Chinese chairman, Wu Kam Shing.

Its membership is a spectrum of Hong Kong's diverse and athletically minded middle class. There is the Hong Kong Chinese court reporter who visits the club in Deep Water Bay every morning at 6am on her way from home in Ap Lei Chau to her workplace in Sha Tin. There are her fellow swimmers, many elderly, who swim out to the buoys, rain or shine, hot or cold, every day. Some 100-150 "paddlers" use the club as a base for outrigger canoeing, dragon boating and paddle boarding. Some of the sports were unknown to Hong Kong before the club nurtured them, others, like dragon boating, are deeply traditional.

In the current debate over the future of the 67 private recreational clubs that pay minimal rents to the government, history has been swept aside. True, they were designed on a colonial template, in which the diverse ethnic groups were given separate retreats. Membership at the pinnacle clubs was reserved primarily for the British. For other ethnic groups, there was a Chinese Recreation Club, a Club de Recreio, a Filipino Club, an Indian Recreation Club, and so on.

Hong Kong's colonial rulers reviewed the lease system for the private clubs in 1968 and 1978, and in the run-up to the handover in 1997 when leases were restricted to 15-year terms. At the handover, a number of leases were extended to ensure a so-called smooth transition. The sceptic would argue that this was a dodge, and indeed, in 2011, during the first post-1997 review of private recreational leases by the Legislative Council, most of the clubs seemed oblivious to public concerns as well as new requirements for "opening up"

> The government argued that subsidies were needed because use of land for sports and recreation would never trump commercial utilisation

to schools and community organisations. Following the last well-publicised review in 2013 and the current investigation seeking new venues for public housing, they are no longer complacent.

Should the private clubs have got their cushy rental deals in the first place? At the time of the reviews 50 years ago, the government argued that subsidies were needed because use of land for sports and recreation would never trump commercial utilisation. What was true then is even more so today. The high cost of land in Hong Kong is a drag on innovation and creativity. The existence of the private recreational clubs means it has been less of a drag on sports.

Most of the clubs with government leases are framed around core sports – golf, tennis, horse racing, swimming, sailing and rowing, to name a few. Hong Kong athletes whose development was supported by these clubs have gone to the Olympics and other international competitions. In the 1940s, the Victoria Recreation Club was the driving force behind Hong Kong's participation in the International Olympic Committee and the Hong Kong Sports Federation.

Public pressure on the clubs to forge community ties and contribute to Hong Kong through "opening up" schemes is appropriate – but not the pressure to convert their land to high-rise estates. The loss is not only to the core sports they represent but also to their unique DNA, which is the foundation of Hong Kong – diverse, cosmopolitan and adventurous. If you want to look for a Hong Kong that is not just about money, one place to look is here.

Edith Terry is the honorary secretary of the Victoria Recreation Club. She writes in a personal capacity

Stand-up paddlers participate in an event held at the Victoria Recreation Club. Photo: Jonathan Wong

What the Western belt and road sceptics are missing

Wenshan Jia says there are opportunities for the whole world to benefit from China's initiative

China's "Belt and Road Initiative" is an original plan to carry out a new type of "collaborative globalisation" above and beyond US-led type. It was proposed five years ago by President Xi Jinping after the tapering off of US-led globalisation in 2008.

Xi offered three principles: mutual consultation, joint construction and shared benefits. China has since then fully executed 101 agreements with 86 countries, and total investment in the 24 countries along the belt and road regions has amounted to US$30 billion, resulting in 75 industrial and trade zones, and 200,000 jobs.

With its focus on infrastructure, the initiative is a model not only for developing countries, but also industrialised ones in Europe and North America, where ageing infrastructure needs replacing. It also adapts to each local, national or regional condition, situation and need. It is proving very democratic, more so than the lopsided US-led globalisation that spurred a populist, isolationist backlash across Western world.

China has done a proper job of explaining to the West what the initiative is and extended a sincere invitation to each country to join. Many think tank scholars and major media outlets in the West have found it potentially lucrative and expressed relatively strong support.

Yet, instead of appreciating China's efforts to both inherit the liberal agenda of globalisation and forge a new path for global development, many Western political elite, led by the US, have started a campaign to resist the initiative. From Australia to the US , and the UK to Germany, there are calls for the West to cut interactions with China to minimise or resist its so-called "sharp power". The labels typically applied to China include "authoritarian" and "predatory", citing Beijing for not upholding "freedom, democracy and individual rights", the core values of the West.

This attitude towards the initiative reveals not only a contradiction in the Western mind, but also the narrowing or even closing of minds.

Isn't it beneficial to meet the goals of forging connectivity and cooperation, as articulated in Xi's effort to enrich and expand the meaning of the "free world" by liberating humankind from geographical, financial, political and cultural barriers? The world is no longer the West versus the rest, as we already live in a world connected by the internet. The initiative seeks to make the world more interconnected for both the West and the rest, contributing to the consciousness of human community with a shared future.

Recently, the initiative has inspired and spawned a push for localisation, particularly the Indo-Pacific strategy led by the so-called "Quad" of the US, India, Japan and Australia. Some Western media view it as a rival or alternative to China's belt and road.

But I would argue that it can be part of China's initiative as long as the three Chinese principles (mutual consultation, joint construction and shared benefits) are observed in the Quad strategy. The belt and road was created to be an all-inclusive platform, so Beijing has no need to fear localisation as long as such strategies do not seek to contain China or disrupt its plan. It would be wise for the Quad and China to look for ways to collaborate.

Quad countries need not take an antagonistic stance towards China: the anti-China smear campaign must be replaced by a discourse involving consultation and communication. The world has experienced more than enough damaging talk, not to mention wars.

The core principles of Xi's belt and road strategy must be always applied in China's interactions with local strategies. If China is, as German Foreign Minister Sigmar Gabriel told the Munich Security Conference in February, "the only country in the world with any sort of genuinely global, geostrategic concept", then Western leaders should cultivate a genuinely global strategy in line with China's vision, for the betterment of all humankind.

> The anti-China smear campaign must be replaced by a discourse involving consultation and communication

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2017 YEAR-END: Politics

Robert Lawrence Kuhn

Watching China's year for history

When future historians reconstruct the long history of China, they will likely circle 2017 as a year of significance. I've seen it all this year, and attended or even participated in the major events. I've conversed with Chinese leaders and experts, and searched for meaning.

I didn't appreciate the opportunity I've had until I began reviewing the year from China's domestic perspective, seeking themes and trends, discerning from what we know about the recent past what we might forecast about the near-term future. It takes no flash of insight to see the leadership and vision of President Xi Jinping headlining almost every event.

Following is the review of the meaningful events of 2017.

Robert Lawrence Kuhn

January: Xi began the year with a memorable speech at the World Economic Forum in Davos, Switzerland, mounting a roaring defense of globalization, free trade, and economic openness and liberalization. It was the first-ever speech by China's head of state at Davos and, as commentators the world over noted with amazement and irony, as the United States under President Donald Trump was apparently retreating from the world and abrogating global leadership, China under President Xi was apparently defending the international order and promoting global governance.

March: The annual "two sessions" of the National People's Congress, China's top legislature, and the Chinese People's Political Consultative Conference National Committee, the top political advisory body, seemed to radiate more energy than usual, perhaps in anticipation of the 19th National Congress of the Communist Party of China in the fall. A highlight was the adoption of the draft general provisions of civil law, a step closer to a long-needed unified civil code.

I sensed delegates' growing confidence and assertiveness to represent their particular sectors in the competitive marketplace of public ideas and government funding, a competition that is vital for the development of China's kind of consultative democracy. This was especially true of the CPPCC National Committee, whose members are often leading experts in their fields, and that even though they do not have legal authority to pass laws, they have moral authority to exert pressure and affect change. It did not escape notice that, throughout the "two sessions", Xi was recognized repeatedly as "core" of the CPC Central Committee and of the whole Party.

Belt and Road to the fore

May: The first "Belt and Road Summit" (the Belt and Road Forum for International Cooperation), held in Beijing, was the diplomatic highlight of the year in China. More 130 countries participated, including 29 heads of state and government. The goal was no less than the transformation of the economic structure of the developing world: building infrastructure and connectivity, stimulating development, alleviating poverty, reducing severe imbalances, promoting South-South cooperation, and revitalizing globalization.

Xi called the Belt and Road Initiative "the project of the century".

July: China celebrated the 20th anniversary of Hong Kong's return to the motherland. It was a time of reflection of geopolitical, economic, long a global leader in economic freedom and competitiveness. Hong Kong had flourished: its way of life preserved, its economy dynamic. But times change. With Shanghai and Shenzhen on the rise, and with some claiming the "one country, two systems" principle is in decline, Hong Kong faces new challenges.

August: The People's Liberation Army celebrated its 90th anniversary. In a move both practical and symbolic, the PLA established its first overseas logistics base in Djibouti, situated strategically on the Horn of Africa.

Xi Jinping, who is also chairman of the Central Military Commission, said the PLA is becoming "strong" informationized armed forces. "The Chinese people love peace," Xi said. "We will never seek aggression or expansion, but ... No one should expect us to swallow the bitter fruit that is harmful to our sovereignty, security or development interests".

Foreigners are wondering: what is the PLA's long-term plan for operating overseas? What will be the impact of the PLA's modernization and reform, especially its burgeoning blue-water navy with multiple aircraft carriers?

August: China hosted the BRICS Summit in Xiamen, East China's Fujian province. The five BRICS countries — Brazil, Russia, India, China and South Africa — have increasing influence on global economy and politics, but does BRICS as an organization make sense? China certainly thinks so, and promoted the BRICS Summit as representing a new kind of multilateral global governance. There are complexities: political instabilities in Brazil and South Africa; the growing, comprehensive cooperation between Russia and China; the sensitive, multifaceted relationship between India and China.

Throughout the year, events on the Korean Peninsula continued to intrude. While China continued to call for denuclearization and dialogue, just hours before Xi gave the opening speech at the BRICS Summit, the Democratic People's Republic of Korea detonated its most powerful nuclear bomb ever.

19th Party Congress and the New Era

October: The highlight of the year was, as expected, the 19th CPC National Congress. Not quite expected were the far-reaching proclamations and, taken together, the magnitude of their significance. I witnessed history and see six highlights.

First, Xi's name and thought were written into the CPC Constitution — "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era". Xi is now, officially, the overarching creator and arbiter of political thought, and combined with his designation as "core" of the CPC, he is now the undisputed, unimpeded leader with singular authority. Xi Jinping "thought" is built on the twin pillars of people-orientation and national rejuvenation, with the new concept of development (innovation, coordination, green, open, sharing) driving a new kind of economic growth.

Second, the "New Era", which is intended as a policy-energizing game changer, is a conceptual lens with which to view the range of goals, strategies and concepts that compose Xi's way of thinking and the Party's new direction.

The "New Era" is envisioned in three temporal segments: (i) from now until the fulfillment of China's first centenary goal of a "moderately prosperous society" in 2020 (2021 being the 100th anniversary of the CPC); (ii) from 2020 to 2035, when the CPC states it will build on the foundation of the moderately prosperous society so that, after "15 years of hard work", the country will "basically" realize "socialist modernization"; and (iii) from 2035 to 2050, when the CPC states it will "work hard for a further 15 years" and "develop China into a country that is prosperous, strong, democratic, culturally advanced, harmonious, and beautiful". Realizing this vision at mid-century, around 2050, with China being respected as a great, modern, socialist country, is the second centenary goal (2049 being the 100th anniversary of the People's Republic of China).

Third, the new "principal contradiction" in China's "New Era" is between "unbalanced and inadequate development" and "the people's ever-growing needs for a better life", which includes increasingly broad demands for "democracy, rule of law, fairness and justice, security, and a better environment". From now on, this new-era principal contradiction, replacing quantitative GDP growth with qualitative improvement of life, is what will guide China's domestic affairs and policies.

Fourth, the Party's leadership role in governing the country is expanding as the Party's stringent approach to governing itself is intensifying. The Party will be more deeply embedded within aspects of government and sectors of society (including private companies, foreign businesses and educational institutions). Far-reaching and purifying itself, the Party's governance will be stricter and more comprehensive. The anti-corruption campaign, the "tiger" continues, it has been enhanced.

Fifth, the "New Era" has China moving closer to center stage of the world and making greater contributions to humanity, offering "Chinese wisdom" and "Chinese solutions" for world problems. China's diplomacy will be proactive, championing the development of a community with a shared future for humanity and encouraging the evolution of the global governance system.

Sixth, I watched the new senior leaders of China, the seven members of the new Standing Committee of the Political Bureau of the CPC Central Committee, walk out on stage, ending months, really years, of speculation and rumor. Because everything in China reports to a Political Bureau Standing Committee member, and because of the Party's principle of collective leadership, their personalities, composition and balance determine the vision, strategies and policies that shape China.

The importance of the Political Bureau Standing Committee remains true today, but its importance frankly is also less true today. It is hard to overstate the consequences of Xi's name written into the Party Constitution, thus inscribing into perpetuity his predominant status and assuring his continuing pre-eminence in the country's political life.

SHI YU / CHINA DAILY

Following the 19th Party Congress, some might have expected a respite, a slower November and December. They were anything but.

Form is substance

November: The "state visit-plus" of US President Donald Trump came at a delicate moment. Amid pomp and pageantry, including a personal tour of the Palace Museum (Forbidden City), $253 billion in business deals were signed, a world record, though critics complained it was all transactional, nothing structural. The number, some said, was more form than substance, but here, perhaps, form was substance. Both Xi and Trump hailed the visit as "successful and historic".

Yet, on sensitive topics, one could be forgiven for seeing sunlight between their positions. On trade, Xi lauded the business deals and market access, "which will deliver great benefits for the two peoples". Trump sought improved trade with China based on "a level playing field for our workers" and solving the "massive trade distortion" — which, characteristically, Trump blamed on past US administrations, not on China.

On the Democratic People's Republic of Korea, Xi reiterated China's firm commitment for a denuclearized Korean Peninsula and direct communications, while Trump said that they "agreed not to replicate failed approaches of the past" and he called for "increased economic pressure until North Korea abandons its reckless and dangerous path".

Subsequent to Trump's visit, China announced revised regulations that were indeed structural. China will reduce or eliminate (over time) limits on foreign ownership of financial services sectors, including insurance, commercial banking, securities, futures, and asset management.

Significantly, the State Council, China's Cabinet, established a Financial Stability and Development Committee to oversee financial stability and boost risk prevention (including close monitoring of "shadow banking" and corporate debt). This new supra-ministry commission will be empowered to make decisions related to reform and development, coordinate issues concerning monetary policy, and establish financial policies and related fiscal and industrial policies, thus improving the financial regulatory system.

At the Asia-Pacific Economic Cooperation Leaders' Meeting in Vietnam, Xi strengthened his themes of making economic globalization more open, balanced and inclusive; lauded regional multilateralism for promoting common interests; and stressed the Belt and Road Initiative for advancing global connectivity.

What struck me in Xi's speech was what he inserted about poverty: "To lift all the remaining poor people out of poverty is a solemn commitment made by the Chinese government to the people. It is uppermost in my mind, and I have spent more energy on poverty alleviation than on anything else."

"Upper most in my mind?" "More energy on poverty alleviation than on anything else?" An extraordinary statement from the president! Although Xi has been making high-profile visits to numerous poor countries and villages, relentlessly championing "targeted poverty alleviation" for realizing the "moderately prosperous society", this was his clearest statement that poverty alleviation is his highest priority.

Main contradiction reinforced

Two unpleasant events in Beijing reinforced the new "principal contradiction", highlighting "the people's ever-growing needs for a better life" as that surprisingly powerful lens for viewing Chinese society. The first was alleged child abuse at a kindergarten. The second was a fire in which 19 migrant workers died. In both cases, netizens reacted with anger: in the alleged child abuse, anger about a perceived coverup; in the fire, anger for the disorderly and inconsiderate way of evacuating migrant workers.

When Xi first announced the new principal contradiction at the 19th Party Congress, some dismissed it as arcane Party-speak. Public reaction to the alleged child abuse and to the fire revealed its prescient and perspicacious wisdom.

The second volume of Xi Jinping: *The Governance of China*, a collection of 99 of Xi's speeches, conversations, instructions and letters, was published. The book offers a resource to follow the development of Xi's ways of thinking and ideas and to understand China's new guiding philosophy and the specific elements that compose it.

The month ended with what may seem a light touch when Xi called for China to upgrade its toilets. Toilets among the year's highlights? Xi was serious and his point is probative. For China to become a more civilized society, the hygiene of the people must be improved (especially in rural areas), and for China's tourism industry to blossom, better bathrooms are needed. Although China's leader talking toilets elicits smiles, and some say it downgrades his dignity, it demonstrates, above all, Xi's intrinsic commitment to improve the quality of life for the Chinese people.

December: In the first nine days of the month, Xi engaged with four international events, stressing common commitment to build a community of a shared future for all humanity.

The four engagements

To the "CPC in Dialogue with World Political Parties High-Level Meeting", Xi described four views of the future: a world that is safe and free of fear; prosperous and free of poverty; open, inclusive and free of isolation; and environmentally clean and beautiful.

At the "Fourth World Internet Conference", Xi asserted how the internet posed new challenges for sovereignty, security and development.

At the "2017 Fortune Global Forum", Xi called for openness and innovation to enhance global economic growth, pledging to liberalize and facilitate trade and foreign investment in China.

And at the "South-South Human Rights Forum", Xi emphasized that "human rights must and can only be promoted in light of specific national conditions and people's needs".

The CPC's Dialogue with World Political Parties was path-setting in that it put the world on notice that a transformed CPC under Xi is reaching out globally with pride and confidence — explaining, especially to developing countries, the developmental benefits of party leadership and party building. The point of debate, as it were, has shifted from whether the China model of a perpetually ruling party (with all that entails) is good for China to how the China model is good for other countries.

At a meeting of the Political Bureau of the CPC Central Committee, Xi directed authorities to improve digital infrastructure, promote the integration and sharing of digital resources, and protect data security, in order to better serve the nation's economic and social development as well as to improve people's lives. The big vision is to turn China into a world leader in big data and a global innovation hub for artificial intelligence by 2030.

The last major event of the year was the annual Central Economic Work Conference, which identified "three tough battles" for the next three years: preventing and defusing risks (especially financial risks), eliminating absolute poverty (China's 2020 goal), and curbing pollution (for instance, encouraging investment in environmental projects). Setting three-year targets was itself an innovation (over the traditional one-year targets), thereby strengthening long-term thinking, reducing pressures to make hasty decisions, and giving markets stable expectations.

The priority of reducing absolute debt was modified to controlling a rise in borrowing, such that China's debt-to-GDP ratio does not further deteriorate. This signaled that growth would not be jeopardized and (to the disappointment of some) debt-driven growth would continue.

To contain financial risk, China will crackdown on irregular and illegal activities in its chaotic financial industry and intensify regulatory scrutiny; continue supply-side structural reform (reducing overcapacities); and maintain a proactive fiscal policy, a prudent and neutral monetary policy, and a basically stable yuan exchange rate.

Resisting arguments for shrinking State-owned enterprises, China will make SOEs "stronger, better and bigger"; and the government will seek efficiencies by becoming more of an investor and less of an operator.

China pledged to open up its markets further and to balance trade by boosting imports (US pressures, expressed vividly by Trump, were not mentioned).

Theoretical foundation

After five years of "practice", the theoretical foundation of China's economic development is now labeled, "Xi Jinping Thought on Socialist Economy with Chinese Characteristics for a New Era", paralleling the phrase added to the Party Constitution two months earlier. The "thought" is based mainly on Xi's new concept of development — innovative, coordinated, green, open and shared development — which has been the core of his economic philosophy.

For the first time at this annual conference, topics other than economics were on the agenda. Diverse public concerns were addressed, such as burdensome homework for schoolchildren, sex discrimination in the workplace, and online scams. This was a clear consequence of how China's new "principal contradiction" in the "New Era" now drives domestic policy: as Chinese citizens seek a "better life", the government must respond.

To pick one message to characterize the year, it is this. In 2017, under the leadership of Xi, China set the trajectory, in all vital areas, of the country's domestic development and international engagement for the next 30-plus years, to mid-century, to 2050.

Every year brings challenges. For China, no doubt, big ones lie ahead. In 2018, China will celebrate the 40th anniversary of reform and opening-up. The world is watching.

The author is a public intellectual, international corporate strategist and investment banker, and China expert/commentator. He is co-creator (with Adam Zhu) and host of CGTN's Closer to China with R.L. Kuhn and "The Watcher" commentaries.

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中国日报
ChinaDaily
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Robert Lawrence Kuhn

New era on the road to 2050

Robert Lawrence Kuhn

I witnessed history sitting in the Great Hall of the People during the 19th National Congress of the Communist Party of China. I listened raptly to Xi Jinping, general secretary of the CPC Central Committee, when he delivered his new-era-defining report. I heard the amendment to the Party Constitution that enshrined "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era." I watched members of the new Standing Committee of the Political Bureau of the CPC Central Committee walk out on stage. I was awed by the presence of the leadership, past and present. And I was overwhelmed by Xi's grand vision for China and the country's increasing, radiating confidence. Most of all, I marveled at the remarkable and historic transformation of China, which means so much to the Chinese people and which in this new era will mean so much to the rest of the world.

Having departed the Great Hall of the People, I reflected how I, an American, found myself caught up in the welling Chinese patriotism of the 19th CPC National Congress. Certainly, I was experiencing firsthand this inflection point in Chinese history, when China envisions itself becoming a fully modernized country and taking proactive part in international affairs, and regaining its leading seat at the high table of great nations.

What have I just witnessed? Following are some personal observations.

A general consensus describes four primary outcomes of the 19th Party Congress: Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era; a new "contradiction" that defines China's principal social challenge; a China that takes "center stage in the world"; and the Party enhancing its leadership of society, including maintaining, indeed intensifying, its anti-corruption campaign.

To me, however, a highlight was the specificity of Xi's vision of China, not only establishing policies for the next five years, but also framing the agenda and setting the strategies for the next 30 years. This congress, Xi said, is the "confluence" of the "Two Centenary Goals": a moderately prosperous society by 2020 (2021 being the 100th anniversary of the CPC), which will likely be fulfilled within the term of the 19th Party Congress, and a great, modern, socialist country by 2050 (2049 being the 100th anniversary of the People's Republic of China), which is being planned by the 19th Party Congress.

In a multi-meaning refinement, the path to mid-century is now designed in two stages. In the first stage, from 2020 to 2035, the Party states it will build on the foundation of the moderately prosperous society such that, after "15 years of hard work," the country will basically realize "socialist modernization."

In the second stage, from 2035 to 2050, the CPC states it will build on a basically achieved modernization, "work hard for a further 15 years" and "develop China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious, and beautiful." China portrays its mid-century self as a global leader in every area of human consequence: economics and trade, science and technology, military and defense, culture and governance.

But Chinese leaders, and officials in general, seem to have a different highlight. While the "Two Centenary Goals" are certainly vital, especially with new stages and specificity, they focus on the amendment to the Party Constitution: "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era".

"The (Xi's) thought is the biggest highlight of the 19th National Congress of the CPC and a historic contribution to the Party's development," said Zhang Dejiang, the third-ranking member of the Standing Committee of the Political Bureau of the 18th CPC Central Committee. Liu Yunshan, the fifth-ranking member, said the elevation of Xi's thought to the Party's guiding principle is of great political, theoretical and practical significance.

I take a closer look at Xi's thought: first by examining each of its elements, then by considering its unified significance.

"Xi Jinping" is the "core" of the CPC Central Committee and of the whole Party, and he thereby at the top level provides the "centralism" of the Party's cardinal principle of democratic centralism.

The "Thought" is the totality of Xi's fundamental principles. I see four broad categories: people orientation, national rejuvenation, comprehensive development, and Party leadership.

In his report, Xi listed 14 categories: Party leadership over all aspects of society; people-centered policies; deepening reform comprehensively; new concept of development (innovation, coordination, green, open, and sharing); people as masters of the country; adherence to rule of law, comprehensively governing the country by law; socialist value system and cultural confidence; protecting and improving people's livelihoods; harmonious coexistence of man and nature (ecological civilization); national security; the Party's absolute leadership over the military; "one country, two systems" and promoting reunification with Taiwan; international community of a shared future for all humanity; and comprehensive and strict Party governance.

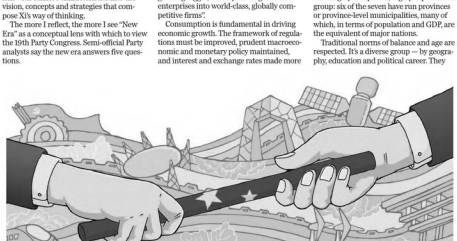
The term "thought" in Chinese has special meaning because before this it had been associated only with Mao Zedong — "Mao Zedong Thought".

"Socialism" is a set of political ideas with a complex history, unified by public or common ownership of the means of production and concern for the masses.

"Chinese characteristics" is the phrase, originating with Deng Xiaoping, that adapts Marxism to China's special conditions — the Sinicization of Marxism in modern China — which includes the market playing a decisive role in the allocation of resources and the encouragement of non-public, for-profit businesses, while at the same time State-owned enterprises still playing a dominant role.

"New Era" is a new idea in the constitutional amendment, and it is designed to profoundly transform the essence of socialism with Chinese characteristics into the vision, concepts and strategies that compose Xi's way of thinking.

The more I reflect, the more I see "New Era" as a conceptual lens with which to view the 19th Party Congress. Semi-official Party analysts say the new era answers five questions.



ZHAI HAIJUN / FOR CHINA DAILY

What "road" to take? Socialism with Chinese characteristics under new historical conditions.

What kind of country to build? First, a moderately prosperous society and then a modernized socialist country.

What development to realize? Better life and common prosperity for all.

What goal to achieve? The great rejuvenation of the Chinese nation.

What contribution to make? Facilitate world peace and prosperity (exemplified by the Belt and Road Initiative of building infrastructure in developing countries).

Thus, Xi Jinping joins only Mao Zedong and Deng Xiaoping in having his name affixed to a political philosophy in the Party Constitution, a blazing sign lost on no one. It then would follow that the "New Era" into which China is now entering is the Dream of the CPC and by extension of the People's Republic of China.

A seemingly subtle but significant change is the Party's judgment of what constitutes the fundamental "contradiction" in Chinese society. ("Contradiction" is a Marxist term expressing a particular way of political thinking — dialectical materialism — which identifies "dynamic opposing forces" in society and seeks to resolve the resulting tensions).

The principal contradiction has evolved from one between the ever-growing material and cultural needs of the people and backward social production to that between "unbalanced and inadequate development and the people's ever-growing needs for a better life," Xi said. The needs for the people to live a better life are increasingly broad and have to be met. Not only have their material and cultural needs grown; their demands for democracy, rule of law, fairness and justice, security, and a better environment are increasing.

This "New Era" contradiction, replacing quantitative GDP growth with qualitative improvement of life, is what will drive China's policy.

The mission of a CPC congress is to review and assess achievements of the previous five years, and to forecast challenges and set targets for the subsequent five years (and beyond). Overall, for the 19th Party Congress, the ambition of the goals and the comprehensiveness of the categories were clear, amplified by the commitment to deepen reform. Here, by category, are what stood out.

The Party and the fight against corruption. Confidence in socialism and the increasing role of the Party in managing all aspects of the country is unequivocal, and the increasingly strict governance of the Party, by reforming and purifying itself, is unambiguous. Moreover, the anti-corruption campaign not only continues but also will be enhanced.

Economy. After more than three decades of rapid growth, China's economy has been transitioning to slower but higher-quality growth. Supply-side structural reform has been written into the Constitution. No GDP growth targets are set. The country focuses on the real economy (as opposed to speculation, such as in the real estate sector). China is not backing away from State-owned enterprises, rather it will support State capital in "becoming stronger, doing better, and growing bigger, thereby turning Chinese enterprises into world-class, globally competitive firms".

Consumption is fundamental in driving economic growth. The framework of regulations must be improved, prudent macroeconomic and monetary policy maintained, and interest and exchange rates made more market-based. For economic development, innovation leads, especially in science and technology.

Poverty alleviation. Xi has made the elimination of extreme poverty in China by 2020 a cornerstone of his domestic policy. After all, how could China claim to have achieved a moderately prosperous society by 2020 if millions of its citizens would be still living in extreme poverty?

Opening up. China reasserts its commitment to become more open, including easing market access and protecting the rights and interests of foreign investors. China's economists see foreign competition as upgrading the quality and cost efficiency of Chinese companies, thus better serving Chinese consumers.

Rule of Law. Strengthening and institutionalizing the rule of law, and weakening arbitrary rule of officials, is a priority. Reflecting Xi's commitment, the Party is setting up a central leading group for advancing law-based governance in all areas, coordinating the activities of judicial organs. The goal is to complete the transformation of China's legal system by 2035 with theoretical foundations and practical enforcement.

Ecology. Beautiful China is one of the country's main descriptions for its second centenary goal by the middle of the century. This modernization is characterized by harmonious coexistence between humanity and nature (such as nature parks) and it requires substantial bolstering of regulatory agencies and their enforcement powers.

Armed forces. China's goal is to transform the People's Liberation Army into a world-class military by mid-century, basically completing military reform and modernization by 2035, with information technology/cyber applications and strategic capabilities prioritized.

Especially significant for Xi's mission are the two "anti's" — anti-corruption and anti-poverty — the former to support the Party's continuing leadership, the latter as a prime example of what the Party has delivered.

Xi does not downplay a realistic appraisal of problems, including social imbalances, industrial overcapacities, financial system risks, endemic pollution. "Achieving national rejuvenation will be no walk in the park," Xi said, an example of his plainspoken candor. "It will take more than drum-beating and gong-changing to get there."

The speculations of China watchers, and the focus of the international media, have been on the new Standing Committee of the Political Bureau of the CPC Central Committee. Because everything in China reports to a standing committee member, composition and balance determine the vision, strategies and policies that will shape China.

This remains true today, but less true today. It is hard to overstate the significance of Xi Jinping's name written into the Party Constitution. Xi is now, officially, the originating designator and overarching arbiter of "Thought" as it relates to "Socialism with Chinese Characteristics for a New Era", which is the guiding political theory of China and encompasses, essentially, everything in China. For Xi to be named in the CPC Constitution is the ultimate in authority, surpassing even "core" (which already had superseded all other leaders), thus setting into perpetuity Xi's predominant status and assuring his preeminence in the country's political life.

That said, to know China is to know the members of the Standing Committee. They are a highly competent, highly experienced group: six of the seven have run provinces or province-level municipalities, many of which, in terms of population and GDP, are the equivalent of major nations.

Traditional norms of balance and age are respected. It's a diverse group — by geography, education and political career. They have worked together, in various combinations, for years. With much now being written about each member, I'll just offer some personal reflections.

First, of course, is Xi Jinping, general secretary of the CPC Central Committee, whose prior experience included governor of Fujian province and Party secretary of Zhejiang province and Shanghai.

In 2005, I was advised to study the "Zhejiang model", which promotes entrepreneurship to generate economic development. I met Xi, who was then Zhejiang provincial Party secretary, and he recommended that I study China both "horizontally" across diverse regions and "vertically" through the history of its development.

"To understand our dedication to revitalize the country, one has to appreciate the pride that Chinese people take in our glorious ancient civilization," Xi said. "This is the historical driving force inspiring people today to build the nation. The Chinese people made great contributions to world civilization and enjoyed long-term prosperity," he said. "Then we suffered over a century of national weakness, oppression and humiliation. So, we have a deep self-motivation to build our country. Our commitment and determination is rooted in our patriotism and pride."

But he cautioned that pride in China's recent achievements should not engender complacency.

Second, premier of the State Council, is Li Keqiang, who was Party secretary of Henan and Liaoning provinces. When I visited Li in Liaoning, he explained the complex challenges of revitalizing State-owned enterprises while creating a fertile environment for private businesses. Li shared the same experience of Xi as educated youths in the countryside in the 1970s. The experience gave them the chance to know better rural China and the lives of rural people and thus fostered their people-orientation.

The following members are new:

Li Zhanshu, who was governor of Heilongjiang province and Party secretary of Guizhou province, has been director of the general office of the CPC Central Committee since 2012.

Wang Yang, vice-premier, is former Party secretary of Chongqing municipality and Guangdong province. At the height of the global financial crisis in early 2009, he argued it was imperative to restructure Guangdong's economy, so that it can move up the ladder of industrialization and promote more knowledge-based, high-tech, low-polluting businesses.

Wang Huning, secretariat, is director of the Policy Research Office of the CPC Central Committee. Wang is well known for providing intellectual vision and sophistication in support of practical strategies and policies, ranging from political philosophy to international relations.

Zhao Leji, new chairman of the Central Commission for Discipline Inspection, has served as head of the CPC Organization Department, and before that, as Party secretary of Qinghai and Shaanxi provinces. In addition to his responsibilities for Party and government officials, Zhao provided strong support for the poverty-alleviation mission.

Han Zheng is Party secretary of Shanghai. Under his leadership, Shanghai has become a recognized leader in trade, logistics and finance.

What is the impact of all this on China's international relations?

There is no need to speculate. Xi himself, in his report, openly and boldly tells all who will listen. China, he says, "has become a great power in the world". China's global engagement is proactive, confident and growing. Economies and trade drive China's power, exemplified by the much-needed Belt and Road Initiative, but diplomacy, the soft power of culture and media, and the hard power of a blue-water navy projecting power, are developing rapidly.

As Xi said, the new era sees "China moving closer to center stage and making greater contributions to mankind". The country is now offering "Chinese wisdom" and "Chinese solutions" to the international community — the experiences and lessons of China's remarkable development, especially to developing countries.

Regarding Taiwan, which exemplifies Chinese sovereignty, Xi painted a bright red line. "We will resolutely uphold national sovereignty and territorial integrity and will never tolerate a repeat of the historical tragedy of a divided country," Xi emphasized. "We have firm will, full confidence, and sufficient capability to defeat any form of Taiwan independence secession plot."

China has asserted again that it is no threat to any country. No matter how powerful China becomes, China's leaders say it will never seek hegemony or pursue expansionism. Nonetheless, some foreigners remain suspicious, wary of China's long-term ambitions. Who knows future circumstances, they worry? Who knows how China may change? Although I fear self-fulfilling prophecy, I am encouraged that China appreciates such sensitivities and works to build confidence.

The 19th Party Congress, especially Xi's report, is an epic narrative of what China has accomplished, what China has yet to achieve, and what China envisages as necessary to be a great nation. Xi, now, carries the authority; he also bears the burden.

Setting that new target date of 2035 for China to achieve basic modernization, Xi sees China as standing at a new historic starting point and socialism with Chinese characteristics as exploring new horizons. China has entered a new era and the road ahead leads, apparently, to great nation status by 2050.

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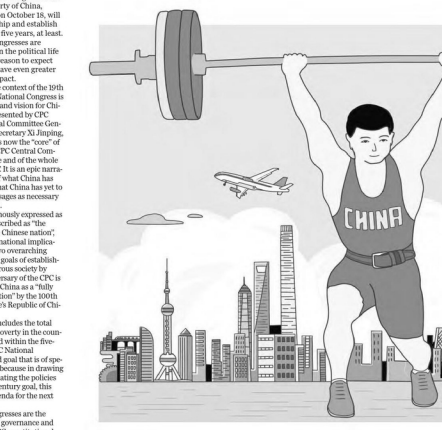
Five years on

Robert Lawrence Kuhn

Historical starting point for new stage of development



SHI YU / CHINA DAILY

The 19th National Congress of the Communist Party of China, which begins on October 18, will set the leadership and establish the policies for the next five years, at least. While Party national congresses are always seminal events in the political life of the country, there is reason to expect that this congress will have even greater and longer-reaching impact.

Robert Lawrence Kuhn

The context of the 19th CPC National Congress is the grand vision for China presented by CPC Central Committee General Secretary Xi Jinping, who is now the "core" of "the CPC Central Committee and of the whole Party". It is an epic narrative of what China has remarkably achieved, what China has yet to do, and what China envisages as necessary to become a great nation.

Xi's grand vision is famously expressed as "the Chinese Dream", described as "the great rejuvenation of the Chinese nation", which has personal and national implications. It is specified by two overarching goals: the two centenary goals of establishing a moderately prosperous society by 2020 — the 100th anniversary of the CPC is 2021 — and establishing China as a "fully modernized, socialist nation" by the 100th anniversary of the People's Republic of China in 2049.

The first goal, which includes the total elimination of extreme poverty in the country, will likely be achieved within the five-year term of the 19th CPC National Congress. It is the second goal that is of special interest at this time, because in drawing the roadmap and formulating the policies to achieve China's mid-century goal, this Congress may set the agenda for the next 30-plus years.

The CPC national congresses are the highest authority of CPC governance and decision-making. The CPC constitutional provision of holding congresses every five years was reaffirmed by Deng Xiaoping in the early days of reform (in part to establish order and collective responsibility after a period of chaos and political vicissitudes), and since 1982, Party congresses have been held scrupulously on schedule.

The congresses establish the senior leadership of the Party and hence the nation by electing the CPC Central Committee, which in turn elects all top Party positions, and also the Central Commission for Discipline Inspection; review and assess the achievements and challenges over the five years since the previous Party Congress; set the vision, goals and objectives, agenda and priorities for the subsequent five years; revise the Party constitution (to keep up with the times); and project an image of unified purpose and direction to engender national confidence and commitment.

The review and assessment of the previous five years and setting the agenda and priorities for the subsequent five years are formally presented in the Report, delivered by the general secretary representing the outgoing Central Committee and then reflecting the consensus view of the Party leadership. Ratified by the congress (after minor modifications), it becomes the guiding document that drives policy for the incoming Central Committee.

On the day following a congress, the first plenum of the new 19th Central Committee is convened to elect the Party's new senior leadership, including the Political Bureau, the Standing Committee of the Political Bureau (to which, in essence, everything in China reports), and the general secretary of the Central Committee. Also approved are the Central Military Commission (which oversees the People's Liberation Army), the Secretariat (which runs Party daily operations), and the head of the Central Commission for Discipline Inspection.

The planning for the national Party Congress follows similar patterns. Beginning more than a year in advance, it involves both formal and informal processes. The formal process includes the election or appointment of about 2,300 delegates (2,280 delegates at the 19th National Congress) from among the Party's over 89 million members, at all levels and in all sectors, and the preparation of the Report via an elaborate system of extensive research in targeted areas (involving thousands of experts), solicitation of broad input, drafts (or sections) circulated to numerous Party experts and officials for comments, and iterative intense reviews by higher bodies and senior leaders. In addition, smaller groups are assigned the more sensitive tasks of amending the Party constitution and recommending candidates for the new Central Committee and senior leadership positions.

Final decisions for this year's congress, as well as final edits of the Report, were made at the Seventh Plenum of the 18th CPC Central Committee, held on Oct 11 to 14, days prior to the opening ceremony of the 19th CPC National Congress.

To understand the position and role of CPC Central Committee General Secretary Xi at the 19th Party National Congress, we should appreciate what it means for Xi to be the core. It was in October 2016, at the Sixth Plenum of the 18th CPC Central Committee, that Xi was designated the "core" of the CPC Central Committee and of the entire Party. The appellation was an unambiguous assertion that China requires strong leadership to maintain stability and ensure development given China's unprecedented, complex challenges: domestically, slower growth, industrial overcapacity, endemic pollution, unbalanced development, income disparity, social injustice, social service demands; and internationally, regional conflicts, sluggish economies, volatile markets, trade protectionism, ethnic clashes, terrorism, geopolitical rivalries, and territorial disputes.

Moreover, because China must deepen reform to achieve the goal of being a moderately prosperous society, the resistance of entrenched interest groups must be overcome. In fact, the necessity of having a leadership core to maintain stability and expedite reform was a primary factor relating to Xi's elevation to be the core.

In addition, not only does Xi have the responsibility for China's transformation; he is also accountable for it. He has shown courage in combating rampant practice of graft, bribery and illicit patronage. Xi's relentless anti-corruption campaign is altering how officials in government and managers in industry work, and even how they think. And let no one assume that Xi's battle against corruption has been risk-free.

Xi as the core does not change the Party's cardinal principle of "democratic centralism". The Party says it is encouraging the democratic solicitation of opinions and feedback from Party members, lower-ranked officials, and the general public; and strengthening centralism through Xi's core leadership.

In a complex world, given the diverse interests and forces in Chinese society, the Party asserts that the Chinese Dream cannot be realized without unity. Strong leadership is required to build and maintain unity for China to continue its development.

When Xi received the core appellation, he was already general secretary of the Party; chairman of the Central Military Commission, and president of the country — the three highest leadership positions in China — so how does being the "core" augment his perceived stature or actual power?

The 2016 Party plenum communique confirmed that "the collective leadership system ... must always be adhered to". Nonetheless, there must have been shifts in terms of both the setting of the agenda and making final decisions — or else making Xi the core would have little meaning.

When foreigners dismiss the political aphorisms of China's leaders as simplistic sloganeering, they miss an opportunity to enrich their understanding. Chinese officials certainly hold Xi's frameworks in high esteem.

Xi's thought for the Party, the inner-Party directives, include the "eight regulations" (against waste and perks); "four self-confidences" (in the country's development path, theories, systems, culture of socialism with Chinese characteristics); opposing the "four evil winds" (formalism, bureaucracy, hedonism, decadence); the "four greats" (struggles, projects, enterprises, dreams).

The China model, Xi said, successful at home, also broadens the way for developing countries to modernize, thus providing Chinese wisdom and Chinese solutions for problems facing mankind.

The combined intent is to make Party members, especially Party and government officials, more dedicated, committed, competent and loyal, with exemplary moral standards of probity and rectitude. It is no small order.

The Party's unremitting anti-corruption campaign, unprecedented under Xi, has won strong public support and will certainly continue. But some foreign analysts mistakenly see Xi's anti-corruption campaign as largely a tool of political power, thus reflecting a superficial and one-dimensional understanding of China. Befitting the size and complexity of the country, for almost every decision of importance, China's leaders have multiple motivations.

For the anti-corruption campaign, these motivations include respect for the rule of law and judicial impartiality; effective functioning of the Party devoid of personal interests; public trust in the Party; efficient economic resource allocations (corruption distorts markets); expediting reform (by breaking up "interest groups" that resist reform); maintaining national unity (by removing officials with non-standard political ambitions); elevating morality of Chinese society; restoring ethical standards of Chinese civilization; and facilitating China's emergence as a world-business center and global role model.

Xi's thought for the country — his new ideas, new strategies, new initiatives set forth over the past five years — can be encapsulated as the overall vision of the "Five in One" construction (economic, political, cultural, social, ecological); governance of the country via his "Four Comprehensives" (a moderately prosperous society; deepening reform, strengthening the rule of law, strictly governing the Party); and renewed economic development via the Five Major Development Concepts (innovation, coordination, green, open, sharing), plus "supply-side structural reform".

Xi's thought for national rejuvenation includes a grand vision for global governance, consisting of eight big diplomatic concepts: a global community of shared destiny and future; win-win cooperation; economic globalization; fairer global governance; a new kind of major power relationship; expanding cooperation while managing differences; multilateralism; and people-to-people exchanges. Moreover, Xi's Belt and Road Initiative — facilitating economic development in developing countries, especially by building much-needed infrastructure — is China's "project of the century".

China recognizes it has international responsibilities and seeks to uphold a common, comprehensive, cooperative and sustainable security strategy. China's own requirement is to protect the country's three sacrosanct "core interests" — its political system, economic development, and national sovereignty (territorial integrity).

China appreciates that to be a major country, with its political influence reflecting its economic strength, and also to protect its own core interests, its diplomacy must be pro-active. China does not claim that its "China model" can be adopted by other countries, but the world should understand Xi's principles of governance as optimally suited for China's domestic conditions.

Party congresses have similar styles and to casual observers, they can all seem much the same. But they do have differences, which are usually subtle and often meaningful.

For the 19th National Congress, some of the things to look out for are:

Are political frameworks and policies stated in their expected forms? If so, confidence in political and economic stability is reinforced.

How is General Secretary Xi Jinping's status as "core" further stressed, as expected?

Who are the members of the new Standing Committee of the Political Bureau and what are their portfolios?

Assuming the Party Constitution is amended to include Xi's new ideas, new strategies, new initiatives, will they be given an overarching label?

What is the composition of the new Central Committee?

In listing the essential economic, political, cultural, social and ecological policies, are there shifts of emphasis that, however nuanced, suggest changing priorities?

For deepening reform, surely stressed, what targets are specified? For example, what will be stated explicitly about State-owned enterprise reform?

Environmental protection is a high priority, but what specific regulations and enhanced enforcements distinguish the fight against pollution under Xi from those of previous congresses?

Many social areas will be highlighted — for example, education, healthcare, rural land reform, migrant worker residencies — but do any stand out?

As already affirmed, the anti-corruption campaign will continue, but will its intensity or direction change in any manner, will it be institutionalized? How will the forthcoming National Supervisory Commission work?

What is the relative prominence of military reform and modernization?

What is the relative prominence of international affairs, given the high-profile Belt and Road Initiative and China's intense, pro-active diplomacy?

Forecasting the 19th CPC National Congress is not all guesswork and triangulating rumors. Following tradition, Xi offered to Party leaders a preview of his Report. Speaking on July 26, he outlined China's achievements since the previous national congress: new concepts of development, deepened reform, enhanced rule of law, strengthened environmental protection, and a more capable military.

China, Xi said, has, after suffering century-long hardships and tribulations, taken three historic leaps, from standing-up to becoming better-off to becoming stronger. Xi called for a comprehensive, strategic and forward-looking action program, highlighting the success and vitality of socialism with Chinese characteristics, the increasing strength of the Party, and China's expanding circle of friends in the international community. In China, he stressed, political legitimacy is founded on competence and accomplishment.

Significantly, Xi asserted that China's development stands at a new historic starting point and that socialism with Chinese characteristics is entering a new development stage. The CPC cannot rest on its laurels, he stressed. The country faces daunting challenges. He warned the Party against self-satisfaction and blind optimism.

Xi's comments resonated with his core values and bear witness to his consistency. In 2006, then Zhejiang Party Secretary Xi told me that China should be proud of its successes, but its "achievements should not engender complacency", adding "we need to assess ourselves objectively".

Preparing for the upcoming congress, Xi recognizes that the people's desire for a happier life is stronger than ever. They want better education, higher incomes, stable jobs, reliable social insurance, higher quality healthcare, more comfortable living conditions, a more beautiful environment and a richer cultural life.

And there has been an inflection point in China's international perspective, reflecting the nation's consequential global engagement. The China model, Xi said, successful at home, also broadens the way for developing countries to modernize, thus providing Chinese wisdom and Chinese solutions for problems facing mankind.

The influence of the 19th CPC National Congress and the impact of Xi Jinping's thought seem for decades to come.

The author is a public intellectual, international corporate strategist, and China expert/commentator. He is co-creator (with Adam Zhu) and host of CGTN's Closer to China with R.L. Kuhn.

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GLOBAL TIMES

CPC-led system a political innovation

Editor's Note:
The Two Sessions, the annual meetings of China's top legislative and advisory bodies, have been under global spotlight for the past few weeks. This year's Two Sessions are of extraordinary importance as they have adopted the constitutional amendments, restructured government institutions and elected the new national leadership. To understand what the institutional changes mean for China's future, as well as the policy agenda for the coming year, Global Times (**GT**) Washington-based correspondent Hu Zexi talked to Dr. Robert Lawrence Kuhn (**Kuhn**) who is a long-time China observer, and author and editor of over 25 books. Kuhn has been invited to Beijing to take a closer look at this year's Two Sessions.

Illustration: Liu Rui/GT

GT: What kind of policy issues are you following during the Two Sessions?
Kuhn: The proposed amendments to the Constitution of the People's Republic of China give a road map of areas deemed critical. Several of the provisions strengthen the stability, continuity and robustness of governance. Beyond these, I looked for any deviations from expectations, for example, on State-owned enterprise reform or local government financing. I also looked for any reaction to the increased push-back against China's rising global capabilities from certain countries.

GT: In recent years, the Chinese government has made more efforts to make Two Sessions' agenda better meet public expectations. For example, the government will cooperate with media websites to conduct surveys about top policy areas that the public wants the Two Sessions to address. How do you evaluate such efforts?
Kuhn: Irrespective of the nature of the political system or ideology, transparency in governance is the best way for government to deliver effective, efficient programs, and enhance credibility. The Chinese government has been striving to increase transparency, which deserves praise.

The Two Sessions are a vehicle for the government to communicate with the people and engage them through media in dealing with all the critical issues.

GT: How do you see the political belief of China that democracy should meet the real or fundamental needs of the public?
Kuhn: Government performance and democracy are not the same.

The former is indeed assessed by alleviating poverty, reducing pollution, improving healthcare and the like. Democracy is the public participation of common people in the complex process of governance.

Thus, true democracy is much broader than one-person-one-vote. It includes, primarily, the capacity to provide substantive input on complex issues and to provide oversight in the management of officials.

GT: China for long has argued that democracy or any other political mechanism should be developed on the basis of a country's specific condition. How do you see this belief, as well as its practice?
Kuhn: Certainly, political systems differ, even between countries that have the same ideology. Nonetheless, there are great commonalities in the goals and objectives shared by all countries and people. I suspect that over time, measured in not less than decades and perhaps even centuries, there will be a convergence of systems toward what I call with a smile, "Optimizationism" – leaders, officials, executives making myriad decisions every day to optimize outcomes without thinking of the ideology.

GT: There's talk about China's unique system of multiparty cooperation and political consultation led by the Communist Party of China (CPC) during the Two Sessions. How do you observe this system?
Kuhn: The benefits of a one-party-rule are apparent: the coherence of policies, rapid decision-making and formulation of strategies that require long-term consistency for long-term commitment. But all systems of governance have trade-offs, and two challenges of one-party-rule are assuring that all rational points of view, including dissenting ones, are included in the decision-making process; and systemic checks and balances for oversight of officials at all levels of government.

China's system of multi-party cooperation and consultation, led by the CPC, is a political innovation in including inputs and ideas from diverse segments of society, while still maintaining harmony of spirit and consistency in policies. But because of its scale and power, the CPC, which is the ruling party, has a higher obligation to pay attention to other parties and voices. A true democracy is measured by how the majority treats the minority.

GT: As a decades-long observer of China, what do you think the constitutional amendment will bring to the country?
Kuhn: This constitutional amendment is all about strengthening China's system of governance, especially the Party's leadership of the country and President Xi Jinping's leadership of the Party and the nation.

Going by the whiplash of Western reactions, one could be forgiven for assuming that the amendment is all about abolishing term limits of the president and vice president. In fact, there are 21 clauses in the constitutional amendment and to understand where China is going, one must gauge the meaning and intent of all of them.

Xi has been consistent in respecting, indeed in championing, China's Constitution, and by now amending it, he underscores the congruity between the realities of how China is governed and what the Constitution says – thus bolstering Xi's commitment to the Rule of Law.

Establishing the National Supervisory Law and Commissions, expanding the anti-corruption campaign to all public organs and organizations, reaffirms Xi's commitment to enhancing the rule of law.

As for term limits, it is not that Xi will hold the formal titles of leadership for life, but that he will hold real leadership long enough to bring about China's national rejuvenation and establish Chinese type democratic norms.

All factors considered, because of China's special conditions and Xi's special capabilities, abolishing term limits may be good for China. It is commonly said that China's system of governance can ensure stability and consistency, which is a necessary requirement for advancing reform.

GT: What do you see as the underlying reason for the institutional restructuring of the government passed during the Two Sessions?
Kuhn: The sweeping restructuring of the Chinese government streamlines the bureaucracy, eliminates institutional conflicts of interest between government bodies, aligns authority with responsibility, and, significantly, enhances the leadership of the Party in the management as well as the oversight of the government. Although the restructuring has multiple motivations, a prime driver is to support China's continuing development under complex conditions – a slowing economy, uncertain financial risk, unacceptable pollution, the special demands of innovation.

Given China's challenges at home and abroad the government restructure is timely. Some media outlets describe it as a "reshuffle," as if the random rearrangement of a deck of cards. I beg to differ.

This restructuring is as deliberate as it is far-reaching – and planned precisely to address a host of contradictions. The outcome is to strengthen CPC's leadership throughout the country. In fact, deepening reform is now defined, for state as well as for Party institutions, as strengthening the CPC's leadership in every sector. The aim is consistency and uniformity in implementing policy.

The announcement of the restructuring followed swiftly after the adoption by the National People's Congress of the constitutional amendment, and although both were long in the works, their rapid-fire sequence serves to underscore the preeminence of President Xi in setting the new agenda, and the power of the Party in implementing the new policies.

GT: Environment has always been a heated topic at the Two Sessions. How do you see the prospect of green development in China?
Kuhn: I have been following China's environmental problems for over two decades, and until recent years under President Xi. While officials would of course decry pollution, it only became progressively worse. Companies flouted the law. The minuscule fines were a small price for not worrying about the cost of controlling pollution. Officials were loath to risk impeding economic growth. Today is dramatically different.

President Xi has raised ecology and environment to the highest category of national priorities. Ecological progress is among the five top goals (along with economic, political, cultural and social progress). Green is the third of the New (Five Major) Concepts of Development. The change in attitudes toward pollution is stunning. For example, fines for corporate pollution now hurt.

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INSIGHT

Core strength

Robert Lawrence Kuhn says those who see China's designation of Xi Jinping as core leader to be a variation of strongman rule misunderstand its significance for a people navigating their way through huge challenges

When, at a recent party plenum, President Xi Jinping (習近平) was designated as "core" of the Communist Party's Central Committee, some Western media were quick to condemn the rise of a new "strongman". While recognising the significance of Xi as the core was correct, conjuring up visions of an emerging dictator was not.

I recalled my meeting with Xi years earlier, when he was still party secretary of Zhejiang (浙江) province. Even then he was criticising "empty talk" and advising, "We should never overestimate our accomplishments or indulge ourselves in our achievements".

I took note of how Xi stressed, "We need to assess ourselves objectively". Hardly, in retrospect, the ruminations of a gestating dictator.

To understand why Xi is now the core, one must appreciate the complex challenges of our times. China is now facing multiple challenges: domestically – slow growth, industrial overcapacity, endemic pollution, imbalanced development, income disparity, social injustice, social service demands and, internationally – wars, regional conflicts, sluggish economies, volatile markets, trade protectionism, ethnic clashes, terrorism, geopolitical rivalries, and territorial disputes in the South and East China seas.

Most critically, because China must deepen its reforms to achieve its oft-promised goal of a "moderately prosperous society" by 2020, the resistance of entrenched interest groups must be overcome. Morbidly, there is what some call a pervasive "soft resistance" – local officials who do not do their job and economic elites who migrate.

If reform had been progressing smoothly, then why strengthen central authority by investing Xi with the status of core leader? Xi has encountered obstacles; if there were no obstacles, there would be no need for a core leader.

I have been speaking to party officials and theorists about Xi as core leader. In fact, the necessity of having a leadership core to maintain stability and expedite reforms is the first and foremost of what I found to be four factors relating to Xi's elevation.

A second factor is that not only does Xi have the responsibility for China's transformation, he is also accountable for it. Moreover, he has shown courage in confronting and dismantling a vast, corrupt system of bribery, patronage and illicit wealth accretion.

A third factor is that Xi as the core does not end, and even may not diminish, the cardinal principle of "democratic centralism". The party bolsters each of the concepts: encouraging the democratic solicitations of input and feedback from members, lower-ranked officials, and the public; and strengthening centralism through Xi's leadership of the principal levers of power (his positions as party general secretary, head of state, chairman of the Central Military Commission, and head of the "leading groups" on reform, national security and internet security).

A fourth factor is that a core is required to manage the party more strictly and thereby give members and the public more confidence. Witness Xi's relentless and unprecedented anti-corruption campaign, which is altering how government officials and industry managers work and even think. Let no one assume that Xi's battle against corruption has been risk-free.

Significantly, these four factors underpinning Xi as the core leader map onto his overarching political framework, his strategic blueprint called "The Four Comprehensives" – a moderately prosperous society, reform, rule of law, party discipline.

Xi's core status arises, we're told, through the collective will of the party and the people. Becoming party core is not an automatic consequence of being general secretary; a core leader must fit the times and the status must be earned.

Speaking at a press conference following the 18th Central Committee's sixth plenum last month, Huang Kunming (黃坤明), executive vice-minister of the committee's Publicity Department, said that the "central and local departments as well as the military all expressed their support" for Xi's position as party core, adding that this decision was "based on the valuable experience of the party and we feel keenly about it".

Huang explained that "a core is needed to ensure that the party will be the governing party", describing it as significant for upholding the Central Committee's authority and maintaining the central, unified leadership of the party and for its "staying true to its mission".

Therefore, party theorists explain, Xi as core leader is more a ratification of reality than a shift of fundamentals.

What does Xi as core mean in a historical context? It was Deng Xiaoping (鄧小平) who introduced the concept when he designated Jiang Zemin (江澤民) as "core of the third generation" of central leaders, bolstering Jiang's stature following his unexpected appointment as party leader in 1989. At the time, China was facing the dual impediments of economic stagnation and social uncertainty at home, and economic quarantine and diplomatic isolation abroad. As Deng pointed out: "Any leading group should have a core; a leadership without one is unreliable."

Only then did Deng retrospectively apply the novel term to Mao Zedong (毛澤東) and to himself, as core of the first and second generations, respectively. Of course, Mao was so utterly dominant that calling him core during his lifetime would have seemed a demotion. Deng remained core even when he no longer held any official position.)

Today's world is more complex. China faces threats at home and abroad. Volatility goes and uncertainty abounds – the Middle East and Donald Trump are offered as evidence. The need to secure China's stability is more essential than ever, and thus to strengthen Xi's authority is a primary reason, I'm told, for designating Xi as core leader. Party theorists say China "urgently" requires a political mandarin that is sophisticated and nuanced, attuned to contemporary times. Though conditions now differ from those in 1989, Deng's admonition rings timelessly true.

However, that a core leader is needed now does not mean it would always be needed. When China becomes a fully modernised nation, perhaps by mid-century, conditions may change again.

True loyalty is telling leadership in private what one really believes is in their best interests

I hear frequently of the "painful lessons of China's century of blood and tears" and that for China not to have a vested and authoritative leadership core would be "unthinkable". Party inner talk says "Xi Jinping has passed the test of the people" to be China's political core, leadership core, and a core of the times.

Chinese scholars argue that "core" is a unique characteristic of Chinese political theory – however inapplicable (even inexplicable) in Western political theory. They call Western concerns that Xi as core leader means that "a new emperor is born" wildly unfounded, even paranoic. In feudal society, the emperor ruled unconditionally with arbitrary imperial power, and in such a "command-obey" system, goes the argument, there is simply no need for a core.

Rather, given today's party political structure, the concept of a core both strengthens cohesion and serves to prevent a personality cult, not to promote one. Having a core means acknowledging that the party system is not the "emperor system" – absolute power is rejected – and that the optimum system, at least for the foreseeable future, is a combination of concentrated central authority and democratic collective leadership.

Corroborating this functional balance, in the communiqué issued following the sixth plenum, the "collective leadership system" is reconfirmed. It states: "The implementation of collective leadership and personal division of labour is an important component of democratic centralism and must always be adhered to." And it stresses: "Any organisation or individual shall, under any circumstances, not be allowed to violate this system for any reason." The three "any's" seem no accident.

Some analysts see contradictions. On the one hand, the communiqué calls for democracy and constructive criticism internally within the party. On the other, disobeying the central leadership is forbidden, backed by vigilant supervision and tough discipline.

Yet to read these statements as contradictory is to misunderstand what is happening here. Xi appreciates the complex and arduous tasks that lie ahead. He told me so a decade ago, and it is obviously true today than it was then. The statements are harmonised, first, by the party's motivation to seek optimum policies for the country, and second, by keeping most of the divergent views internal.

True loyalty is telling leadership in private what one really believes is in their best interests, not pandering and fawning by repeating what one thinks leadership wants to hear. Though there are concerns, no one here worries that Xi will become Mao.

China is now the world's largest trading nation and its second-largest economy. China's diplomacy is expanding and its military is growing. From its Belt and Road initiative building infrastructure and facilitating trade in over 60 developing countries to its leading role in the UN peacekeeping forces, China, the "Middle Kingdom", is involved in every meaningful matter of international affairs.

So, what kind of China do we want? Certainly not one with weak central leadership and fragmented citadels of power. With its huge and imbalanced population, and its diverse culture and traditions, China needs a strong and Xi-like leader with sufficient strength and prestige to secure social stability, drive economic reforms, and guide it in being a responsible world power. Xi as core leader should be good for China and, thus, for the world.

Robert Lawrence Kuhn is a public intellectual, political/economics commentator, and an international corporate strategist. He spoke at the launch ceremony of President Xi Jinping's book, The Governance of China, and is the author of Close to China with R. L. Kuhn, a weekly show on CCTV News produced by Adam Zhu

Xi Jinping as core leader is more a ratification of reality than a shift of fundamentals

The basic law of unintended consequences

Mike Rowse says the continuing political tussles in HK illustrate the pain of being caught in a cycle of actions and reactions, and we must address the root cause of the grievances

There has been a considerable focus recently on the Basic Law and the rule of law, and their interaction. Perhaps neglected in the process has been a different but relevant concept: the law of unintended consequences, whereby an action gives rise to outcomes unforeseen by the instigator.

Hong Kong's tortuous path towards political reform is a case in point. The first reference to the idea of universal suffrage for selection of the chief executive comes in Article 45 of the Basic Law, promulgated back in 1990. Looking towards 1997, its purpose was to reassure. Naturally, attention turned to the subject in the early part of this century. While people understood that the move towards universal suffrage had to be in accordance with the "principle of gradual and orderly progress", the reform package put forward in 2014 was widely perceived as disappointing; the plan to stick with an unrepresentative nominating committee deciding who could enter the race was unpalatable.

The Sunny Cowell's white paper on the governance of Hong Kong, intended to set things straight, only stirred things up and led to the Occupy Central protests. The government let the action linger, hoping public anger would pay dividends in the 2016 Legislative Council election. While the 79 days of disruption did bring the protesters momentary opprobrium, memories quickly faded. In the election, the pro-government share of the vote actually fell, and the attack on the idea of independence led directly to a near 20 per cent share of the vote for a localist faction. This was surely not the objective.

Now the government is trying to overturn the election outcome. The practice of banning some potential candidates from standing, then using all means at hand to unseat some of those elected, is a tactic more usually associated with third-world countries following a military coup.

Has something been lost in translation here? Perhaps we need an interpretation of the interpretation

In the short term, the judicial review sought by the chief executive against the decision by Legco president Andrew Leung Kwan-yuen to give Sixtus Baggio Leung Chung-hang and Yau Wai-ching another opportunity to take the oath has been successful. Mr Justice Thomas Au Hing-cheung ruled in the High Court that their oaths were invalid, they should not be given a second chance and their positions should immediately be vacated. Many observers thought he might decline to rule at all, and simply refer the matter back to the Legco president. The problem with one arm of the administration delving too deeply into the processes of another is that it inevitably generates more requests to do so. And, sure enough, we now have legal challenges against more legislators, plus a challenge against the chief executive himself.

Given that, in the past, other Legco members who had politicised their swearing-in and then done it properly second time round were permitted to take up their seats, did Leung and Yau have a legitimate expectation" that they would enjoy similar treatment? The Legco president certainly thought so, hence his original ruling. Now it is for a higher court to decide.

Meanwhile, the National People's Congress Standing Committee has sought to clarify Article 104 of the Basic Law, which requires all people concerned to "swear to uphold the Basic Law of the Hong Kong special administrative region of the People's Republic of China and swear allegiance" to it. But the interpretation is different: it talks of "a legal pledge … to the People's Republic of China and of its Hong Kong Special Administrative Region" (emphasis added). Has something been lost in translation here? Perhaps we need an interpretation of the interpretation.

If, at the end of the day, there are two (or more) vacant Legco seats, then we are in by-election territory. I don't think the people are fooled for one minute about what is going on. In each constituency, an impeccable opposition candidate will stand, win a majority, and take the oath impeccably. Unfortunately, this tragedy – or farce – will continue until the government starts to address the underlying grievances over the lack of meaningful political reform instead of just hammering the symptoms, which generates new grievances in the process.

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A yellow umbrella, a symbol of the Occupy movement, is used in a recent protest against Beijing. Photo: Reuters

Bring down the curtain on this idiotic political drama

Alice Wu has had enough of the brouhaha over the oath-taking by two lawmakers. Now that they've been disqualified, HK must focus on battles ahead

I you've tired of all the politics, I feel you. It's draining, to say the least, especially when the melodrama in Hong Kong is dragging out; it has become downright dreadful when we know there is no respite in sight.

We were supposed to have a brief break after last September's Legislative Council polls, before the next big event. Even though a large number of people will be unable to cast a vote in the Election Committee subsector elections, less than a month away, and in the chief executive election, scheduled for late March next year, the city should by now be focusing on what's ahead.

But, thanks to the two recently disqualified lawmakers, who lacked the necessary knowledge, ability and respect for oath-taking, our cabbed dysfunctional legislature has basically been shut down for a month. The ugly politics that should have been insulated within the chamber once again spilled out onto our streets.

And what should have been decided and concluded on September 4 is now dragging on indefinitely, with two or possibly more by-elections added to the election overload.

Hell-raising politics is not going away any time soon, but the sheer stupidity of the localist pair's actions really is one for the books – *Macbeth*, in fact:

Tomorrow, and tomorrow, and tomorrow; / Creeps in this petty pace from day to day,

To the last syllable of recorded time, / And all our yesterdays have lighted fools

The way to dusty death. Out, out, brief candle! / Life's but a walking shadow, a poor player

That struts and frets his hour upon the stage / And then is heard no more. It is a tale

Told by an idiot, full of sound and fury, / Signifying nothing.

They were indeed full of sound and fury, and they did nothing for the common good.

What they did opened the door for an invitation to the courts to intervene. What they did presented an opportunity for an interpretation of the Basic Law by the National People's Congress Standing Committee.

What they did, ultimately, may well become the precedent for other legislators to be similarly barred. And that is why the duo's pledge to spend every penny – and lost we forget, this also means the mounting cost to the public purse – to "appeal at all costs" is beyond left, coming from them.

Clearly, they have yet to wrap their heads around the concept of "personal responsibility". Sixtus Baggio Leung Chung-hang is wrong in believing that their disqualification from Legco rendered the election meaningless. They have no one but themselves to blame for their defenestration. It is they who made the election meaningless.

And, to add insult to the grave injury they brought on the rest of us, they are asking for donations. At some point – if we're not there already – we must take serious offence to be taken as fools, again and again. The curtain must now be drawn on this overly played-out second act.

The irony may be lost on the pair but it's pretty obvious who has been played for total fools. In case they haven't noticed, the lawmakers who served as the duo's chaperones have stopped babysitting them because there is no value in being their keepers any more. Escorting the duo's Legco gate-crashing attempts served their purpose: to usher the two straight to their political end, and the votes the two rendered meaningless are now political spoils.

The two took the toxic brew and there will be no sign of execution that could stop those ready to contest their seats.

We must fight our political fatigue. We can ill afford to be distracted by those who continuously try to foolishly make their own stupid mistakes our collective problem.

Alice Wu is a political consultant and a former associate director of the Asia Pacific Media Network at UCLA

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Looming tech war

Robert Lawrence Kuhn says the ZTE showdown points to a misunderstanding over motives

As someone who works for US-China understanding and roots for US-China partnerships, I've been concerned, but not worried, over what others have called "a looming trade war". I've not worried because tariffs don't work; they are blunt instruments in a globalised economy, penalising American companies and consumers as much as Chinese. Most American experts oppose tariffs, and President Donald Trump likes to make big deals after making big threats.

But I am now worried over what I will call "a looming tech war", because the structural imperatives go deeper.

As everyone who follows China knows, the US Department of Commerce has imposed a denial of export privileges against ZTE, China's second-largest telecommunications equipment manufacturer, thus prohibiting US companies from selling essential electronic components and software to ZTE, a crippling sanction.

China has responded resolutely, with actions that seem selected from expert scenario planning, and with rhetoric, both indignation and nationalistic bravado.

From China's perspective, according to its Ministry of Commerce, "If the United States attempts to curb China's development… it miscalculates. The action targets China; however, it will ultimately undermine the US itself," affecting tens of thousands of jobs and hundreds of related US enterprises.

"Targeting technology is like throttling the neck of the Chinese enterprises," wrote *China Daily*. "The ZTE case should remind China's decision-makers of the urgency to become self-sufficient in core technologies."

President Xi Jinping has been prescient about domestic control of core technologies, especially related to the internet and more recently to artificial intelligence. Since taking office in 2012, he has stressed the "hidden risks" that come with core technologies not being mastered domestically. He said, "Heavy dependence on imported core technology is like building our house on top of someone else's walls: no matter how big and how beautiful it is, it won't remain standing during a storm." Innovation is the first of Xi's "five major concepts of development".

> **Beijing also claims that the country itself is a victim of discriminatory policies**

From the US perspective, according to its Department of Commerce, the prohibition against ZTE is punishment for ZTE violating US sanctions against Iran and North Korea, making false statements and obstructing justice, and then after reaching a settlement agreement, violating it.

The United States claims it is not resisting China's rise, but rather the country's unfair or illegal means to achieve it. The US action enumerated four such practices as rationale for imposing punitive tariffs, all relating to technology or intellectual property: foreign firms in China are required to form joint ventures and transfer knowledge, as well as license technology with below-market terms and conditions, while the state supports Chinese enterprises in acquiring foreign hi-tech assets, and sanctions commercial cyber theft.

President Trump is wildly unpopular among American elites, especially among policy experts, who do not need much of an excuse to criticise him – save the fusillade of attacks on Trump's tariffs. But these elites are not criticising Trump on US moves to counter what they, with unusual consensus, perceive to be China's unfair policies, and in some cases unlawful programmes, to become a world leader in state-of-the-art technologies, especially AI, information technology, robotics, advanced manufacturing, new energy vehicles, aviation and biotechnology.

China claims that it is still a developing country, so different rules apply, a foundational principle of the World Trade Organisation. Beijing also claims that the country itself is a victim of discriminatory policies restricting its imports of hi-tech products.

Of course, China had to respond with appropriate actions as well as confident words, imposing heavy tariffs on US sorghum and signalling that additional agricultural tariffs were at the ready, along with barely veiled threats against US companies operating in China.

Here's my fear. While I have argued that most mainstream American experts are not motivated to impede China's rise, as many in China believe, I can no longer make that argument persuasive.

In the US, there has been a dark turn among experts that US policy towards China, calibrated over four decades to shepherd China's rise, has failed: China, they have come to believe, has become a competitor and may become an adversary, and that US relations with China must now be managed as with an emergent adversary, not as with a developing partner.

In China, nationalistic voices are on the rise, castigating the US for its self-serving motivation to impede China's rise, and calling for China to become more self-reliant, more rapidly, especially in world-class semiconductors, so that the country would not be vulnerable to US "blackmail".

Welcome to the unhappy world of self-fulfilling prophecy, where the actions of each side in response to a perceived threat from the other side increases the likelihood of that threat morphing from theoretical to actual.

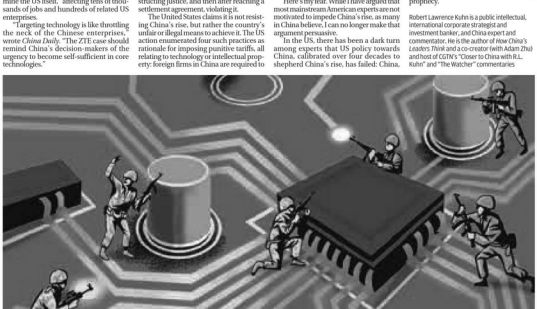
To both sides, I offer two pieces of advice. First, take a breath and a fresh look, because the road on which you are travelling will not lead to a happy place.

Second, contemplate why the other side is misinterpreting your actions. To my American friends, what makes China think the US is resisting its rise? To my Chinese friends, what makes the US think that China is a competitor and may become an adversary?

Projecting malevolent motives and seeing sinister conspiracies is the easy way out. It can solicit cheers and plaudits in one's domestic media, but it will impede progress and is likely to be self-defeating.

The US and China must each figure out how not to confirm the other's self-fulfilling prophecy.

Robert Lawrence Kuhn is a public intellectual, international corporate strategist and investment banker, and China expert and commentator. He is the author of How China's Leaders Think *and a co-creator (with Adam Zhu) and host of CGTN's "Closer to China with R.L. Kuhn" and "The Watcher" commentaries*



Greater effort is required to foster gender diversity

Kevin Sneader and Anu Madgavkar say the Asia-Pacific region needs more women leaders

Women's representation in high-ranking positions in business and politics is a global issue, but an even more pressing one in Asia-Pacific. Across the region, only one in five people in leading roles is a woman.

This waste of women's talent comes at an economic cost. Many economies in the region are ageing and skills shortages are on the rise: making more of women's potential can help meet such challenges. Businesses gain a great deal from supporting women. McKinsey's 2018 report "The Power of Parity" found that companies in the top quarter for gender diversity on their executive teams are 21 per cent more likely to experience above-average profitability.

Even in developed economies in the Asia-Pacific, few women are getting to the top in business – in Japan, there are no female CEOs in the top 100 public companies. In Australia and Singapore, the share of women CEOs in 2016 was only 6 per cent and 5 per cent respectively. The Philippines, a traditionally matriarchal society whose government has been proactive in tackling gender inequality, does better in senior positions overall, but only 3 per cent of CEOs and 15 per cent of board members are women.

The lower share of women in leading positions within companies isn't all about the glass ceiling – the point at which women's careers appear to halt. Rather, women's under-representation has its roots as far back as the education system. In India, only 44 per cent of students in tertiary education are female and many graduates don't take up employment: only 25 per cent of entry-level positions in Indian companies are taken by women. In Japan, the share of women enrolled in college is higher, at 47 per cent, but women were only 28 per cent of students attending the top 10 universities.

The share of women erodes sharply from entry-level to the boardroom, and the biggest "breakpoint" is motherhood. In a 2015 McKinsey survey, 45 per cent of Asian executives cited the "anywhere, anytime" performance model as the largest barrier to women moving into senior roles. In Japan, a survey found that three-quarters of women respondents said they were not interested in managerial positions, partly because promotion would mean working even longer hours.

The second most cited factor behind women dropping out of work is the "double burden" of holding down a job while looking after the family. In China, 35 per cent of female respondents to a 2017 survey said that they had a lower salary when they returned to work after having a baby, and 36 per cent said they had to accept a demotion. Sixty-three per cent said they did not want a second child because this would hurt their career.

Many women struggle to return to work because childcare options are limited or too expensive. In Australia, net childcare costs (paid by two-earner families) were 20 per cent of an average family's income in 2015, compared with the 13 per cent average in OECD economies.

The attrition of women from the talent pipeline starts even earlier than motherhood, as societal attitudes militate against women pursuing a career and prioritise looking after families. In India, 70 per cent of respondents to the 2010-2014 World Values Survey agreed with the statement, "When a mother works for pay, the children suffer."

> **More can be done to give women the freedom to choose a career as well as motherhood**

There has been some progress. The share of women on company boards has been rising, reflecting efforts by both governments and private-sector organisations. India has made it mandatory for companies to have at least one female director, and the Australian Securities Exchange Corporate Governance Council tracks gender diversity in its constituent companies. Japanese pharmaceutical company Takeda hit its target of 30 per cent of new managers being women (from only 6.2 per cent in 2015) through a range of initiatives including flexible working hours.

However, there is much more that can be done to give women the freedom to choose a career as well as motherhood. Narrowing the leadership gender gap will require concerted action by governments and companies from encouraging and helping girls to learn the right skills for a changing labour market and mentoring women in their careers, to shifting attitudes towards women's roles through public-awareness campaigns to – perhaps most importantly – making work flexible.

More help with childcare is urgently needed. Governments can use public spending to expand childcare provision and companies can set up nurseries. Flexible working practices in companies are vital. In Australia, financial services company Suncorp enables flexible working through "work at home hubs" that combine home-work stations and working spaces in regional shopping centres.

Such efforts are only likely to be effective with a root-and-branch shift in attitudes towards women's roles in society. Governments can lead from the front, setting targets for women's representation in business as Japan and Singapore have done, and more companies can push for true diversity within their ranks. Doing so is not only in the interests of their bottom line but the health of the economies in which they work.

Kevin Sneader is chairman, Asia-Pacific, of McKinsey & Company. Anu Madgavkar is a partner at McKinsey Global Institute

Older people still have lot to offer in the workplace

Paul Yip says measures to ensure Hong Kong retirees remain active through employment may help prevent poverty and partially offset the impact of a declining birth rate

Employment is the most robust method for keeping people out of poverty. In Hong Kong's latest poverty situation report, for those with a job, the poverty rate is only 12.3 per cent, compared to 77.4 per cent among those not working. Among older adults with a job, it is 12.9 per cent, compared with 48.2 per cent among those without employment.

Chief Secretary Matthew Cheung Kin-chung has recently raised the possibility of promoting workforce participation for those aged 56-64 and helping those aged 65-74 re-enter the job market. Hong Kong's workforce participation rate among older adults is 17.7 per cent, lower than in Japan (22.7 per cent), Singapore (26.8 per cent) and Seoul (31.5 per cent).

The Japanese government has been very active in promoting workforce participation among its older citizens, especially since 27 per cent of its population was aged 65 or over as of 2017. The population size has decreased, from 128 million in 2010 to 127 million in 2015, and the United Nations estimates that the number will continue to fall until 2061. The number of migrants moving to the country has not offset the population decrease, leaving no choice but to improve the labour participation and productivity rate, especially among older adults and married women with children.

Though Hong Kong's total fertility rate is only 1.2 per woman – less than the 1.4 in Japan – we have benefited from migration from the mainland to keep our population moving. Our life expectancy is also very similar to Japan's, at 81 for men and 87 for women. It is time to explore how to make better use of our older adults. We should create the right environment for raising the retirement age and extending employment beyond that age. Some issues, like excessive health and medical insurance costs for the older workforce, and long working hours, should be re-examined.

> **The most important thing is to provide an option for older adults to be active in the job market**

The government can create a fund to protect against excessive increases in insurance costs, while introducing a more flexible working arrangement for the older workforce.

The most important thing is to provide an option for older adults to be active in the job market, and give them the choice of whether to continue in a job. Those who have had enough could perhaps take on volunteered work in the community. For those who stay on with paid employment, more flexible time arrangements would better suit their needs, while their roles could be redefined so as not to stand in the way of the career advancement of younger workers. Some tangible support might be needed for the business sector, ideally through a tax-deductible arrangement rather than the proposed cash support.

For some work, such as in teaching and research, the situation depends on individual ability. As in overseas countries, participants should be allowed to work as long as they meet expectations. At present, a vigorous review process takes place to determine whether to extend beyond retirement age.

The education levels of Hong Kong's older adults is not high and, among those with very low levels, most can only find work in low-skilled jobs such as cleaning and security duties. Nevertheless, these areas face a shortage of labour and can be a good fit. In such cases, people's rights and pay should be better protected, to avoid companies exploiting this group of workers.

Also, sometimes, older adults are not driven by money when seeking work. For some, finding meaning in their work can be sufficient. The Japanese experience shows that some older adults continue to work to maintain their independence and fitness. Such workers, whatever they do, display high levels of professionalism.

Respecting the wishes of older adults and providing a quality choice in terms of working would be a win-win situation for the whole community.

Paul Yip is chair professor (Population Health) in the Department of Social Work and Social Administration at the University of Hong Kong

For some, finding meaning in work is important, as with these women who recycle used clothes to make bags.

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South China Morning Post 南華早報

US-China trade war could end with a 'big deal' through baby steps towards mutual understanding

Robert Lawrence Kuhn says the US must accept China's need to support technological development, while China should work with US policymakers who oppose tariffs but want the country to further open its markets and protect intellectual property rights

PUBLISHED : Thursday, 30 August, 2018, 5:02am - UPDATED : Thursday, 30 August, 2018, 6:15am

Robert Lawrence Kuhn

President Xi Jinping

Major Speech

Seattle

September 24, 2015

Robert Lawrence Kuhn

Simultaneous Commentary

Quest Means Business

China's Xi Jinping UN Speech

Robert Lawrence Kuhn Interview

September 28, 2015

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CNN'S AMANPOUR – May 29, 2013
President Xi Jinping to meet President Barack Obama

Interview with Dr. Robert Lawrence Kuhn, long-time adviser to China's leaders.

http://edition.cnn.com/video/#/video/world/2013/05/29/exp-race-china-us-amanpour.cnn

CHRISTIANE AMANPOUR, CNN HOST: Good evening. I'm Christiane Amanpour. There may officially be only one superpower today, but another is rapidly advancing. The United States and China jockey for position at the pinnacle of the world in what might just be called a race to the top. So how will the first tete-a-tete go between their leaders, the two most powerful men on Earth, U.S. President Barack Obama and China's leader, Xi Jinping, will meet just over a week from now in an informal setting at the aptly named Sunnylands Estate just outside Los Angeles. China is anxious and angry about Obama's much-touted "pivot" to Asia and about what China perceives to be the U.S. siding with Japan over disputed islands in the East China Sea. The United States, for its part, has a laundry list of concerns, everything from alleged Chinese hacking of even its most sensitive military secrets to its influence over North Korea and Pyongyang's nuclear saber-rattling. President Xi says the U.S.-China relationship is at a crucial juncture and he says that he wants to forge, "a new type of great power relationship." So what exactly will that look like? We need to know because this may just be the most important relationship in the world today. And in a moment, I will dig deeper with Robert Lawrence Kuhn, a long-time adviser to China's leaders.

AMANPOUR: Robert Lawrence Kuhn has tremendous insight into China's leaders. He's a long-time adviser to the Chinese government; he's met President Xi several times and he's the author of the book, "How China's Leaders Think." That is a big title. Welcome to the studio.

Fareed Zakaria GPS

"Xi Jinping: The Governance of China"

Robert Lawrence Kuhn

October 5, 2014

FZ: What in the world is the leader of the second largest economy on the planet thinking? That's a question many would love to know the answer to, but in a closed, secretive society, like China, it's all but impossible to know. He rarely gives interviews, and the press in China is far from free. But now we have something to look at. Chinese President Xi Jinping has a new book, entitled *The Governance of China,* and it's aiming for worldwide impact. State media there reports that the book has been published in nine languages: Chinese, English, French, Russian, Arabic, Spanish, Portuguese, German and Japanese.

My next guest, Robert Lawrence Kuhn, says it is a milestone. Kuhn has advised the Chinese government for twenty-five years, and is the author of *How China's Leaders Think*. Welcome.

KUHN: Pleasure to be here.

FZ: First, give us a sense of who this man is for our viewers. Who is Xi Jinping, and why is he a little different from China's ordinary leaders?

KUHN: Xi Jinping has been involved in all aspects of what makes China today. His father was one of the founders of the country, truly a great revolutionary and a great reformer in the early days. Xi Jinping graduated from Tsinghua University ['China's MIT'], with a degree in chemical engineering. Then he went through more than two decades working at the local level. Starting in a county, and then a city, Xiamen, working his way up for many years in Fujian province, becoming the governor. Then for five years Xi was the Party Secretary of, the number one official responsible for, Zhejiang province, which is the center of entrepreneurship in China. So that gives him a great sense of business. And that was when I first met Xi Jinping, actually, in 2005, and then again in 2006, seeing him doing the real work of running a province, a local area.

President Xi is a person, when you see him, who is unassuming; he's big, he has a strong presence in a room, but you feel very comfortable with him. He doesn't put on airs, he's very warm and

BBC World News
Robert Lawrence Kuhn

China's Economy & Politics
President Xi's 'Four Comprehensives'
August 25, 2015

HOST: Dr. Robert Lawrence Kuhn is an advisor to the Chinese government and author of *How China's Leaders Think* and he joins me now from Beijing. A cut in interest rates today - but in China any economic decision is always colored with politics.

RLK: Certainly people are concerned here, but you have to realize a 43% drop in the Shanghai stock market is still 25% above its 52-week lows, so what the economists, government, tries to do is to distinguish between the so-called real economy and the stock market. Most people realize China's stock market was overvalued, but perception is reality, and if people have less money on paper, they'll spend less, and so the fall will affect the real economy.

And you're right, the way to look at such situations in China is not just economically - you can't look at China without looking at politics, and here there are two major areas. One is President Xi Jinping's state visit to Washington. This has been a very tense time in Sino-US relations: South China Sea, cybersecurity, human rights, lots of issues. But what this economic uncertainty and volatility will do - I hope - is to make both presidents focus on what really affects human beings and human lives, focus on economic areas, because this is where there can be some commonality between China and the US. The contentious issues are real, but economics is more real for people.

Domestically in China, it's really interesting, because in recent days, there have been editorials in *People's Daily* talking about extreme resistance to reform and older leaders who are still involved and maybe shouldn't be, and so you have to look at domestic politics in terms of what Xi Jinping, who is China's dominant leader, the president of the country, head of the party, head of the military, and other titles as well, and what his overarching policy is.

It's called the "Four Comprehensives." We learn from each one. The first says that China wants to build a 'moderately prosperous society'. That's their short-term goal. It's not different than others have said in

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"一带一路"将成本世纪伟大故事
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"十三五"文化发展改革纲要印发
俞正声会见比利时联邦参议长
"中国文化周"亮相新西兰
百国商品"抢滩"义乌商品展
通向"命运共同体"的必由之路
中国外汇储备连续三个月回升

"一带一路"将成本世纪伟大故事

——专访美国库恩基金会主席罗伯特·劳伦斯·库恩

本报驻美国记者 张朋辉

《人民日报海外版》（2017年05月08日　第01版）

罗伯特·劳伦斯·库恩

"一带一路"国际合作高峰论坛开幕前夕，本报记者专访了美国库恩基金会主席罗伯特·劳伦斯·库恩。作为此次高峰论坛的嘉宾之一，库恩博士密切关注中国倡议的"一带一路"建设，对"一带一路"建设及"一带一路"国际合作高峰论坛抱有很高期待。他认为，"一带一路"倡议正当其时，"一带一路"建设将成为21世纪最伟大的故事之一。

中国找到了同世界的契合点

库恩分析说，"一带一路"在世界这么受欢迎，是因为中国找到了自身发展经验同世界需要的契合点。他说，"一带一路"倡议在全球许多国家受到热烈欢迎，主要有3个原因：一是基础设施是很多发展中国家的迫切需要，基础设施建设是"一带一路"的重要关注点。二是世界上很多国家经济增长缓慢，他们希望通过参与"一带一路"建设项目刺激经济增长。三是对于许多发展中国家来说，中国既是一个榜样，也是能够带来专长、经验和资本的国家，参与"一带一路"建设项目是与中国加强合作的理想方式。

"一带一路"倡议提出3年多来，成果超出预期，得到国际社会积极评价。库恩说："习近平主席关于合作共赢的全球化观念，从蓝图变成了路线图，从计划到付诸实践，从纸面的概念变成了地面的项目。过去3年，'一带一路'建设项目遍地开花，我亲自见证了这一设想从愿景变成现实。"库恩说，他更看重的成就是将正在进行的"最

Interview: Xi's engaging, creative diplomatic approach to benefit China-U.S. ties: U.S. expert

| 2015-09-10 21:06:53 | Editor: Tian Shaohui

by Xinhua writer Luo Jun

BEIJING, Sept. 10 (Xinhua) -- Chinese President Xi Jinping, with an engaging and creative diplomatic approach, is likely to secure "a big success" in his visit to the United States later this month, said U.S. expert Robert Kuhn.

In an exclusive interview with Xinhua, Kuhn, author of "The Man Who Changed China: The Life and Legacy of Jiang Zemin" and "How China's Leaders Think," recalled Xi's previous trip to California as president and to Iowa as vice president as "one of the best images as for China."

(The photo shows Robert Lawrence Kuhn introducing "Xi Jinping: The Governance of China" at BookExpoAmerica in New York on May 29, 2015)

"He went to sporting events and I was at one of the luncheons. You really had a wonderful, enriched feeling about China at that point," Kuhn said.

Now with the United States entering a political season of presidential election, issues of contention with China and the lack of overall understanding of China's policy has been increasing, but Kuhn believes that low expectations can become an advantage as people may "get surprised on the positive

Comment

editorial • opinion

CHINA DAILY 中国日报

EDITORIAL

A foundation of law

THE FOURTH PLENARY SESSION OF THE 18TH Central Committee of the Communist Party of China opens on Monday and will last for four days. The designated theme — governing through the rule of law — indicates how important this meeting will be for the future of both the Party and the country.

That this is the first time in 17 years the Party has designated such a theme for a plenary session speaks volumes about the importance the new leadership attaches to it. It is high on the agenda.

Yet, the more the concept of rule of law has been discussed, the more obvious it becomes that there is, today, much to be desired.

More than 50 minister-level or higher officials have either been indicted or placed under investigation for abuse of power in the past year or so, underlining the fact that the rule of law is sorely needed. It is perhaps the only way to eliminate, once and for all, the most serious threat to good governance and to secure the blessings of prosperity and justice to the people.

The fact that power today can effectively nullify the law, and that those in power can circumvent it, not only deprives the Party of its capacity to govern the country in a consistently fair and just manner but also disrupts the reasonable running of the marketplace. Abuse of power makes it impossible for fairness to prevail in the socialist market economy.

Despite the great achievements China has made over more than three decades, it will be very difficult for its economy to grow in a sound manner — and neither will society progress in a healthy way — unless fair competition and mutual trust can be secured and ordinary people's rights and interests can be guaranteed through the rule of law.

If the country is to achieve further reforms in various fields and establish and maintain a fair and just society, the power-worshipping mentality among government and Party officials must be eliminated. This is a core goal of the leadership.

Unless the overwhelming majority of Party and government officials not only respect the law, but follow it when making decisions, governing the country by the rule of law will amount to little but lip service.

It will be no easy job, and it will take time for the power-oriented way of doing things to be transformed. But the new Party leadership has shown it has the courage to face the challenge. We therefore have reason to expect much from the current plenary session as they work to put the country on the right track.

OTHER VIEWS

Historic moment

The convocation of the Fourth Plenary Session of the 18th Communist Party of China Central Committee, whose theme is promoting the rule of law, embodies the CPC's deepening perception on governance and the law.

www.people.com.cn October 15.

It is the first time that the CPC, as the ruling Party, will make a comprehensive plan on the rule of law in the form of a Party document. The session, which marks the ruling Party's significant strategic layout on how to govern the nation in accordance with laws and the Constitution, illustrates its new exploration of socialism with Chinese characteristics. The CPC Central Committee will focus on discussions on how to promote rule of law in at a plenary session. —

It has only six years to 2020, the deadline set for the realization of a well-off society for China, and 35 years to 2049, the promised year for China to be a prosperous, democratic, civilized and harmonious socialist modern nation. All these mean China has entered a crucial stage of deepened reforms. Only by sticking to "governance of the nation according to laws" will China realize its historic mission.

www.xinhuanet.com.cn October 19.

The National People's Congress, China's top legislature, should play a bigger role in the country's efforts to promote the rule of law. For example, the NPC can push for deepened reforms within the framework of the Constitution and laws through legislation to realize a benign interaction between reforms and the rule of law. The deeper the water China's reforms will enter, the more legal guidance and guarantees these reforms will need. The NPC enjoys a broad space for maneuvering in this regard.

Beijing News October 17

In the last three months, the Political Bureau of the CPC Central Committee has held two conferences studying major issues related to comprehensively pushing for the rule of law. As the theme "China ruled by law" is set for the Fourth Plenary Session of the 18th CPC Central Committee, the overall planning and prospect of a China governed by law will become increasingly explicit.

Lianhe zaobao October 14

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ROBERT LAWRENCE KUHN

Decoding Xi's future vision

President Xi's new book reveals his thinking about the country's governance and maps out a path for achieving the Chinese Dream

The Governance of China, President Xi Jinping's new book, is unprecedented. Can analyzing the book elucidate Xi's thinking and illuminate China's future? Consider seven frameworks or perspectives: publishing purposes, overarching themes, content analysis, chain of developmental causation, domestic goals, domestic means and global principles.

Publishing Purposes: *substance, symbol, signal.* Substance means Xi's political philosophy and wide-ranging policies — organizing 79 speeches and commentaries in 18 chapters — to discern how Xi intends to realize the Chinese Dream, "the great rejuvenation of the Chinese nation". Symbol means recognizing Xi's emergence as China's leader, with greater authority, confidence and support than observers had expected when he first took office two years ago. Signal means communicating Xi's way of thinking to global audiences in nine languages, an original and explicit outreach to engage the world on multiple levels.

Overarching Themes: *pride, stability, responsibility, vision.* Pride expresses the yearning of the Chinese people for the "great rejuvenation". Stability means maintaining the current political system (Socialism with Chinese characteristics and the Party's leadership). Responsibility means "realizing a moderately prosperous society by the centenary of the Party in 2021". Vision means "turning China into a prosperous, democratic, culturally advanced and harmonious modern socialist country by the centenary of the People's Republic of China in 2049".

Content Analysis. How does Xi impute importance to topics? By examining what's in Xi's book, can we explore what's on Xi's mind? Of the book's 18 chapters, 11 relate to domestic affairs, seven to foreign affairs; six have political relevance; six concern standards of living; and four standards of behavior. Categorizing the content, about a third is politics and people; another third on international relations; about 15 percent each on reform and development, and society and culture; and about 8 percent on national security and defense. Pervasive throughout is reform.

Chain of Developmental Causation. The Chinese Dream is founded on political stability, which enables far-reaching reform, which in turn promotes economic development, and which, when combined with rule of law and Chinese values, strengthens China's society, culture, ecology and even defense. Where is this "chain of causation" in Xi's book?

The first and last chapters affirm political stability: "Socialism with Chinese Characteristics" and "The CPC Leadership", both of which assert the Party's political primacy and thus assure social stability. "The Chinese Dream" is the second chapter, proclaiming the grand mission of national resurgence and personal well-being. Then, chapters on deepening reform and economic development, which lead to chapters on rule of law, advanced culture, social mistakings and ecological progress.

Domestic Goals: *values, morality, prosperity, fairness, happiness.* Values: Xi's vision is to inculcate China's traditional values — "the thoughts of the ancient sages", exemplified by Confucianism — into socialist core values. ("We must take traditional Chinese culture as the base.") Morality: Derived from values, morality is described as "conscious law", and "civic morality" is characterized as needing improvement, while "paragons of morality are important banners for building public ethics". ("A gentleman takes morality as his bedrock" — a traditional virtue that Xi quotes.) Prosperity: "Common prosperity is the fundamental principle of Chinese socialism ... We will accelerate China's overall prosperity." Fairness: Because the Chinese people have always had a perception that "inequality rather than want is the cause of trouble", Xi says, China "should do a better job of promoting fairness and justice". Happiness: The Chinese Dream, Xi says, is to "bring happiness to the Chinese people"; to "ensure the people greater happiness" — but, he cautions, "happiness does not fall from the sky, nor do dreams come true automatically." (In Xi's book, "values" occurs about 120 times, "morality" 24, "prosperity" 62, "fairness" 44 and "happiness" 16.)

Domestic Means: *close to the people, realism, stability, reform, rule of law, combating corruption.* "Close to the people" is an all-encompassing way of thinking that shapes all decisions. Realism: "I have repeatedly said that the great rejuvenation of the Chinese nation can in no way be realized easily", Xi says. "While fully affirming our achievements, we should also be aware of our shortcomings." Stability: The precondition for all else, stability is a recurrent and foundational theme ("stability" occurs 125 times). Reform: Those who wonder whether Xi is a "real reformer" should read "Explanatory Notes ... Concerning Comprehensively Continuing Reform" (page 76). Examples: the market plays a "decisive role"; farmers given transactional property rights; the judicial system separate from the administrative system. Rule of Law: "A fundamental principle" and "the basic way to run the country" — the Fourth Plenary of the 18th CPC Central Committee, focusing on rule of law, is Xi's call to action. Combating corruption is a hallmark of Xi's administration, enhancing each of the five other domestic means. It is no accident that the chapter on combating corruption is positioned, significantly, between "Close Ties with the People" and "The CPC Leadership".

I hear witness to Xi's consistency. In 2006, Adam Zhu (my long-term partner) and I met privately with then-Zhejiang Party Secretary Xi. He stressed that while China should be properly proud of its successes, "achievements should not engender complacency". Xi said: "We need to assess ourselves objectively."

Global Principles. Consider five. Independence (China remains unaligned). Multi-polar world (no country dominates). One country, two systems (Hong Kong, Macao, Taiwan). Peaceful development ("We have made a solemn pledge to the whole world that we will never seek hegemony"). Multilateral affairs (cooperation with the global community). These five global principles drive China's "new model of major country relations" (primarily with the US), "neighborhood diplomacy" (Japan, Vietnam, Korea, etc.), and "cooperation with developing countries" (such as in Africa.) The Silk Road economic belt (land route and maritime) is President Xi's new initiative for multinational development.

Here's my blurb for Xi's book: "This book is a milestone, both in substance and symbol, offering openly the political philosophy of President Xi Jinping and recognizing his emergence as China's senior leader. While misunderstandings about China and its leadership abound, there is now no need to speculate about President Xi. Here is how he thinks, candidly and comprehensively." It is the pride of a patriot.

The author is an international corporate strategist and political/economics commentator. He is the author of How China's Leaders Think *and a biography of former president Jiang Zemin. He gave one of the speeches at the launching ceremony for* Xi Jinping: The Governance of China, *at the Frankfurt Book Fair on Oct 8.*

LI MIN

FU JING

Courtesy, not confrontation, best for Europe

Minister of Commerce Gao Hucheng arrived in the lobby of the European Commission's headquarters at 9 o'clock on Saturday morning. He was led to the office of outgoing Trade Commissioner Karel De Gucht, who has been a thorn in the side of Chinese businesses because of his protectionist attitude ever since he took over the job in 2010.

De Gucht, 60, will be replaced in a few days by Swedish politician Cecilia Malmstrom, 46, when a newly constituted commission gets underway.

In the afternoon, the Chinese side announced a long-awaited agreement in principle: Brussels will not launch an investigation into subsidies of China's telecommunication imports into the European market. The EU side still needs to go through internal procedures for formal approval. The threat was mainly targeted at Chinese telecommunications equipment makers Huawei Technologies Co and ZTE Corp.

While the big picture of relations has been a positive one, the Europeans have annoyed Beijing from time to time — for example, by allowing the Dalai Lama to visit, by attacking China on human rights and by imposing high trade barriers.

Despite such irritants, Beijing has sent constructive signals. In the first half of this year, President Xi Jinping paid the first-ever visit of a Chinese president to the European Union's headquarters. And last week, at the summit of Asian and European leaders in Milan, Italy, Premier Li Keqiang hosted a special dinner for Barroso and European Council President Herman Van Rompuy, thanking them for their contributions to positive relations. At the dinner, the leaders were thought to have touched on the telecommunication trade dispute, which involves about 1 billion euros ($1.26 billion) annually.

The path to Saturday's solution was similar to a pattern set earlier, in mid-2013, after both sides worked through an anti-dumping and anti-subsidy investigation involving China's multi-billion-dollar solar panel exports to the EU. Brussels began that investigation in 2012.

Beijing was unhappy that there had been no high-level invitation to visit Brussels a year after the launch of the investigation.

In May last year, Li made his first trip to Germany after taking office and won the support of the German government, which vetoed Brussels' decision, following dozens of EU member states.

Li made a last-minute call on Barroso the following month, as Brussels was about to vote on whether to end the solar panel dispute through amicable consultation.

Li's decisive role was crucial in preventing the escalation of a trade war. If Beijing had opted to deal with such disputes in an eye-for-eye, tooth-for-tooth manner, both sides would have been losers, with the EU taking the brunt. It has already suffered two economic recessions, and its jobless rate has been in double digits for a few years now.

Of course, with the trade volume between China and Europe expanding, and with investment pouring into Europe, China's government, its businesses and its media must work to make the most of the rising economic tide.

So far, there is no unified Chinese business council in Brussels to represent and lobby for Chinese investors in Europe. By contrast, a major US business organization reportedly has 300 staff members focusing on Brussels' policymaking.

A lack of communication and influence can easily lead to misunderstandings. Businesses in Brussels usually follow Washington's lead when making policies that affect China.

Trade commission leaders need to make more field trips to member states to learn how Chinese businesses matter.

Take China's solar panel exports for example. The industry, which involves about 400,000 workers in China, has offered competitive products to thousands of European upstream companies and helped Europe achieve its status as a green energy leader.

In telecom, Huawei and ZTE are deeply integrated with European partners. And, incidentally, Huawei is a steady job creator in Europe, where young people, in particular, have faced huge employment challenges.

If De Gucht had kept the big picture in mind, he would not have made confrontational moves against China and its businesses.

Overall, the EU recognizes China as strong strategic partner. This is the starting point for dispute control. Amicability helps both sides win. With confrontation, everyone loses.

The author is China Daily chief correspondent in Brussels.
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Closer to China with R.L.Kuhn 07/12/2015 Understanding the CPC Episode 2

About Program

Closer to China with R.L.Kuhn is a new weekly show that brings true, complex story of China to the world through candid, intimate discussions with China's decision-makers and opinion-setters in all sectors.

Air Time:

Sun. 09:30-10:00 BJT/ Sun. 01:30-02:00 GMT ; Repeated: Sun. 21:30-22:00 BJT/ Sun. 01:30- 02:00 GMT

Anchor

Robert L. Kuhn

Robert Lawrence Kuhn is a long-time adviser to China's senior leaders and the Chinese government, and an international corporate strategist and investment banker.

Special Coverage

With the Communist Party of China having marked the 94th anniversary of its founding on July 1st, CCTV NEWS presents an exclusive inside look at the Party.

Hosted by noted author Dr. Robert Lawrence Kuhn, in our five-episode special series "Under-standing the CPC," the Party opens up, sharing its story with the world on TV for the first time ever.

Featuring interviews and insights from leading Party thinkers and officials, the series offers an insider's perspective on the workings of the CPC, its approach to governance and its vision for the future of China.

To catch the episodes, tune into CCTVNEWS every Sunday, starting July 5th, at 9:30 a.m. and 9:30 p.m. Beijing time.

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Views

International Herald Tribune

THE GLOBAL EDITION OF THE NEW YORK TIMES

Xi Jinping's Chinese Dream

EDITORIAL OPINION

OBAMA MEETS XI JINPING

American policy makers must understand that the new Chinese leader needs to be a nationalist to be a reformer.

Robert Lawrence Kuhn

BEIJING What to make of Xi Jinping, China's new senior leader, who holds his first summit meeting this week with President Barack Obama?

The hope is that Xi is a reformer who will guide China through domestic transformation and to responsible statecraft. The fear is that Xi is a nationalist, who has set China on an aggressive course of bullying its neighbors and confronting the United States.

The fear seems not unfounded. China has intensified its territorial claims, from island disputes with Japan to vast areas of the South China Sea.

Xi frequently inspects People's Liberation Army forces, especially naval fleets, exhorting China's military to "get ready to fight and to win wars" and "to win regional warfare under I.T.-oriented conditions."

Xi holds China's top three positions: head of the ruling Communist Party of China, head of state, and, as chairman of the Central Military Commission, head of the military. He will likely lead China for a decade.

Just after becoming party chief in late 2012, Xi announced what would become the hallmark of his administration. "The Chinese Dream," he said, is "the great rejuvenation of the Chinese nation."

Xi's Chinese Dream is described as achieving the "Two 100s": the material goal of China becoming a "moderately well-off society" by about 2020, the 100th anniversary of the Chinese Communist Party, and the modernization goal of China becoming a fully developed nation by about 2049, the 100th anniversary of the People's Republic.

The Chinese Dream has four parts: Strong China (economically, politically, diplomatically, scientifically, militarily); Civilized China (equity and fairness, rich culture, high morals); Harmonious China (amity among social classes); Beautiful China (healthy environment, low pollution).

"A moderately well-off society" is where all citizens, rural and urban, enjoy high standards of living. This includes doubling the 2010 G.D.P. per capita (approaching $10,000 per person) by about 2020 and completing urbanization (roughly one billion people, 70 percent of China's population) by about 2030.

"Modernization" means China regaining its position as a world leader in science and technology as well as in economics and business; the resurgence of Chinese civilization, culture and military might; and China participating actively in all areas of human endeavor.

If Xi's nationalism seems at odds with these grand goals, it is not. Here are six reasons why:

• *Need to consolidate power.* Xi was not selected by Deng Xiaoping, the architect of reform, as were his predecessors (Jiang Zemin and Hu Jintao), and he was not elected by the people. Conventional wisdom had it that Xi would be a weak leader. In order to realize his Chinese Dream, Xi needs to assert strength and assure control. So far, he has exceeded expectations.

• *Need to enable reform.* Xi and Premier Li Keqiang are determined to enact far-reaching economic reforms, the most extensive in 15 years, but there is stiff resistance from those whose dominance would be diminished and benefits cut (such as state-owned enterprises with ties to party power).

This resistance can no longer be couched credibly in terms of ideology, so it appeals to nationalistic aspirations by accusing reformers of "worshipping Western ways," "glorifying Western models" or "caving in to Western pressures." Xi's proactive nationalism is a strategy of "offense is the best defense" — an inoculation, as it were, against the political virus of being labeled "soft" or "pro-Western."

Reformers in China are generally associated with pro-American attitudes and thus subject to fierce public criticism. By establishing himself as a nationalist operating independently of the United States (his first foreign trip was to Russia), Xi is able to secure economic reforms by distinguishing them from serving Western/American interests.

• *Need to legitimze one-party rule.* To perpetuate its rule (which China's top leaders truly believe is essential for the well-being of the country), the Chinese Communist Party has constructed a grand narrative that is founded on three critical claims: Only the Communist Party can continue to improve citizen's standard of living (and ameliorate severe social and economic disparities); only the party can maintain a stable, unified country and construct a happy, harmonious society; and only the party can effect the "rejuvenation of the Chinese nation," which stresses a firm command of "core interests" (i.e., sovereignty and territoriality) and increasing global respect.

• *Maintain stability through unity.* China faces numerous internal tensions, especially a class-divided populace (rich-poor, urban-rural, coastal-inland) that have erupted within one generation. Moreover, an increasingly complex society can fracture along multiple fault lines. Pollution, corruption, healthcare, housing, migrant workers, workers' wages, social cynicism, changing values, among other raging issues, threaten to fragment society — and all are exacerbated by an energetic social media. Only nationalism, which resonates intrinsically and passionately across Chinese society, can provide sufficiently strong social glue.

• *Differentiate from predecessors.* Top Chinese leaders must combine historical continuity with their own distinguishing theories and practices. How shall Xi fare?

Economic growth rates must decline, and a host of domestic tensions (or crises) are coming his way, such as public anger at corruption and resistance to pollution. Hence another rationale for nationalism.

In the past, nationalistic surges were triggered largely by external events (such as NATO's accidental bombing of the Chinese Embassy in Belgrade in 1999). Xi is putting nationalism at the core of his leadership — his nationalism is proactive, riding the high road of patriotism and pride.

• *Personal beliefs.* Xi has deep-seated patriotic convictions, the product of family, life and career. His father, Xi Zhongxun, was a founder of the new China and a leading reformer under Deng Xiaoping. In 2006, when Xi Jinping was party secretary of Zhejiang Province, he told me about Chinese pride and patriotism as motivating China's historic resurgence — words remarkably similar to his recent pronouncements.

So is Xi a reformer? A nationalist? The answer is that he is both, because only by being a nationalist can he be a reformer. American policy makers must understand Xi's nationalism so that when the reigning superpower meets the rising superpower, both can benefit.

ROBERT LAWRENCE KUHN *is an international investment banker and the author, most recently, of "How China's Leaders Think: The Inside Story of China's Reform and What This Means for the Future."*

GLOBAL VIEWPOINT/TRIBUNE MEDIA SERVICES

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Last word

The insider with an outside view

STRATEGIST, BANKER AND AUTHOR HAS INTIMATE KNOWLEDGE OF CHINA — AND ITS LEADERS

By **ANDREW MOODY**
andrewmoody@chinadaily.com.cn

Robert Lawrence Kuhn says the West often doesn't understand the Chinese leadership's key priorities for China. The 67-year-old American is seen by many as one of the few figures outside the world's second-largest economy who actually does.

He is regarded as a knowledgeable insider, having been an adviser to a number of leading Chinese bodies since the late-1980s and knowing many of the country's top political figures personally.

"There is rarely alignment between what topics China's leaders think are important about China and what the world thinks," says Kuhn, also an international corporate strategist and investment banker. "Understanding China requires knowing the difference."

He was speaking recently in the five-star Grand Hyatt hotel in central Beijing, which is his home for 90 days a year. The rest of the time he divides between his three homes in the United States and traveling elsewhere.

"They treat me very well here. Even when I travel around China, I keep a room here," he says.

The hotel is well placed near to China's seat of government around Tian'anmen Square where he has an extensive network of contacts.

His latest book, *How China's Leaders Think: The Inside Story of China's Past, Current and Future Leaders*, which is now out in paperback and more than 500 pages, goes into extensive detail about those who have the responsibility for shaping modern China.

Kuhn, who cuts a dapper figure, says many in the West often have an outdated view about modern Chinese leaders.

"The reality is that China's leaders are meritocratic," he says.

"Many have strong academic backgrounds from top universities and all have significant experience, often having run two or more provinces or major municipalities as Party secretary, governor or mayor."

Kuhn, who is also a new China Daily columnist, is much in demand from major news organizations around the world, including TV appearances on BBC, CNBC, Euronews and Bloomberg TV, and says he has had complete freedom to express his opinions.

"I have written three books about China, dozens of articles and columns; I've produced two major TV documentaries about China and given scores of media interviews — and never has anyone in China even requested to censor anything I've published or broadcast outside of China," he says.

Some in the West, however, have accused him of being too much of an insider and not giving the full picture about China because he was too close to the leadership.

Robert Lawrence Kuhn says China's growth is good for the world, but it cannot save the world. FENG YONGBIN / CHINA DAILY

"I deem it vital, considering China's importance in the world, that China's leaders become more known to the world, and known not just via sound-bites and photo ops, but by seeing them up-close as real people — hearing their own words, listening to their stories, getting their ways of thinking. I'm pleased to facilitate some of this," he says.

"I also offer my own analysis. As for my accuracy and understanding, readers or viewers can judge for themselves."

Kuhn, who was born in New York, began his career as a scientist. After studying biology at John Hopkins University, he did a doctorate in anatomy and brain research at the University of California at Los Angeles in the 1960s. Brain science and consciousness remain major interests of his.

His first involvement in China was through the scientific community in the late-1980s when he worked with scientists reforming China's research and technology base. He received an invitation from Song Jian, then a State councilor and chairman of the State Science and Technology Commission.

At the time he was developing a parallel business career and became president of The Geneva Companies, a leading US mergers and acquisitions company, which he eventually sold to Citigroup in 2000.

At the same time he was cementing links with leading business and political figures in China.

His organization, The Kuhn Foundation, with CCTV (China Central Television), produced the documentary *In Search of China* for PBS in the US, which was broadcast in 2000.

He is now working on a new five-part series *China's Challenges*, which will be broadcast in China in the autumn and syndicated to PBS stations in the US next year.

Perhaps Kuhn's most significant project was writing a biography of former president Jiang Zemin, which was the best-selling book in China in 2005.

How China's Leaders Think was based on interviews with more than 100 leading Chinese political figures, some of whom he has known for more than a decade.

"I know many personally and have worked with several for a number of years. When you hear them speak over a period of time, it gives you a sense of their personalities and character as well as their intellectual capabilities, leadership style and political progress," he says.

Kuhn sometimes likes to invoke humor to explain why there is sometimes friction between Chinese and American leaders.

"Some people think it is because of ideological, historical or cultural reasons that we have communication problems. As I once pointed out, perhaps it's because China's leaders, the members of the Politburo Standing Committee, were trained as engineers, and most American politicians were trained as lawyers. Maybe the problem is that lawyers and engineers can't talk to one another!"

Kuhn says the main focus in the West is often the Chinese economy and whether it will continue to motor ahead.

"China should have 10 to 20 more years of what we should still call relatively high growth, driven by continuing the country's unprecedented urbanization and modernization.

"Growth rates will naturally ease from reform's historic averages — probably to 6 to 8 percent per annum — which is less than we are used to, but which may be optimal because China can more effectively deal with its most severe problems, particularly economic and social imbalances and sustainable development.

"However, China's economy is fragile, vulnerable to exogenous shock. China's growth is good for the world, but it cannot 'save the world,'" he says.

Kuhn says there is often a danger of China being misrepresented because it is seen through a narrow perspective.

"Western media takes China's very real problems and reports them as if they were, say, 80 percent of China's story. I take the same problems — which are genuine and often intractable — and they consist of, say, 35 percent of my work," he says.

"It is not that Western media is conspiratorially biased or always anti-China, it is that they often do not provide proper and sufficient context," he says.

Huang Tiantian, Dong Fangyu and Zheng Yibing contributed to this story.

BIO

ROBERT LAWRENCE KUHN

International corporate strategist, investment banker, senior adviser to multinational corporations and author

Age: 67

Education:
- Bachelor's degree in human biology, Johns Hopkins University, 1964
- PhD in anatomy and brain research, University of California at Los Angeles, 1968
- Master of sciences in management, MIT Sloan School of Management, 1980

Career:
- President and co-owner of The Geneva Companies, a US leading mergers and acquisitions company (sold to Citigroup in 2001)
- Chairman, The Kuhn Foundation, which produces documentaries on scientific and philosophical questions as well as on China issues
- Author of *The Man Who Changed China: The Life and Legacy of Jiang Zemin* and *How China's Leaders Think*, as well as 25 books on business strategy, finance and investment banking

Books: *The Inflationary Universe: The Quest for a New Theory of Cosmic Origins* by Alan H. Guth, *Lake Views: This World and the Universe* by Steven L. Weinberg, *The Coherence of Theism* by Richard Swinburne, and *Infinite Minds: A Philosophical Cosmology* by John Leslie. Books on consciousness by John R. Searle, David J. Chalmers and Colin McGinn.

Film: *Khachaturian* (2003, directed by Peter Rosen; Dora Serviarian-Kuhn, executive producer)

Music: *Piano Concerto in D-flat Major* by Aram Khachaturian (1903-78) played by Kuhn's wife Dora Serviarian-Kuhn

Food: "I eat tofu all the time. I appreciate the unbelievably different textures."

28>

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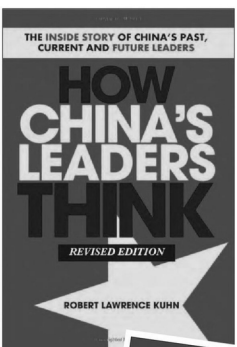
On a mission to explain 'real' China



Above: "How China's Leaders Think"

Right: "The Man Who Changed China: The Life and Legacy of Jiang Zemin"

> I don't try to make anybody happy, but I just want to tell the truth. I can be wrong, and maybe my truth is not balanced.

Lu Feiran

China expert and American public intellectual, Robert Lawrence Kuhn is best known in China for two books about Chinese leaders and their views, including a biography of former President Jiang Zemin in 2005 and one about other leaders and their thinking in 2009.

Kuhn, also an investment banker, business consultant, brain scientist and philosopher, has been granted unprecedented access to Chinese leaders, though he does not speak Chinese.

His biography "The Man Who Changed China: The Life and Legacy of Jiang Zemin" published in both Chinese and English, was a best-seller in China where readers are not accustomed to humanized biographies of leaders.

It was probably the first biography written by a foreigner about a living Chinese leader that was published in China.

Kuhn has also produced documentaries on China, written extensively for Chinese media and is often quoted by western media. He is a contributor and consultant to CCTV, some Chinese newspapers and the Xinhua News Agency.

Kuhn sees his mission as telling the world about the real China.

He was in Shanghai late last month for an International Channel Shanghai (ICS) program he co-produced and wrote about China's challenges, in conjunction with the 18th National Congress of the Communist Party of China. He held a press conference and also spoke with Shanghai Daily.

Chinese media sometimes accuse some Westerners and Western media of China bashing, saying they misunderstand or are even malevolent.

But 68-year-old Kuhn, a New Yorker, is believed to have a more neutral view for China. He received a bachelor's degree in human biology from Johns Hopkins University, a master's of science in management from the MIT Sloan School of Management, and a PhD in anatomy and brain research from UCLA.

His books were published by the Shanghai Translation Publishing House and Shanghai Century Publishing Group.

Kuhn said he "never tried to please the Chinese government, though Western media thought I did."

"I like feedback, including negative feedback, because I know that people are engaged," he told Shanghai Daily.

"I don't try to make anybody happy, but I just want to tell the truth. I can be wrong, and maybe my truth is not balanced."

Kuhn's experience with China started in 1989, when he was invited by former State Councilor Song Jian, director of the State Science and Technology Commission.

The two became friends and Kuhn began traveling between the US and China, getting to know government officials and ordinary people.

Kuhn said he felt frustrated because his experience in China differed from the description in much of the Western media. "Then they only focused on the negative side and ignored the rest," he said.

That disparity inspired him to write Jiang's biography, he said. Jiang himself said that Kuhn didn't "beautify" him and got his wedding date wrong.

Kuhn spent four years writing "The Man Who Changed China." Though he had only met Jiang three times and did not interview him for the book, he talked to many people close to Jiang, including relatives, friends and colleagues, gathering stories and perceptions. He became close to many of them.

"I thought I had been rather familiar with China before I started working on the book," said Kuhn. "But after I started collecting the information, I found that my knowledge was very limited."

Humanized leader

Kuhn said he was determined to depict a real, animated Jiang, different from the seemingly impassive figure appearing on state occasions, on Chinese TV and in newspapers.

"For a very long time, Chinese leaders were either described as God or the Devil, but never in-between," he said. "So I expected to display a Chinese leader who is a human being."

Soon after publication, it became a best-seller in China. After Kuhn held a book-signing in Guangzhou, Guangdong Province, more than 300 books were sold in an hour. In Shanghai, more than a million copies were sold in 2005, the highest in the social science category.

Chinese readers called the book refreshing because it told daily life stories and described Jiang's youth.

One Internet user called "Burn the scarecrow" said before reading the biography, he thought Jiang was "a quiet man standing high above the masses."

"But after reading the book, my first feeling was that he was once young like us and he is also an ordinary man."

The English version, however, received some criticism, primarily that Kuhn was "fawning" over Jiang and the government. Kuhn denied that.

"In fact, the book had a disclaimer, saying all

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2006年3月，库恩在浙江与习近平会谈。

情地与他们聊天，再从庞杂的素材中挑选自己需要的故事……

库恩坦言，在写这本书的过程中，自己与江泽民仅仅在公开场合见过3次面。“1993年，江泽民对古巴进行国事访问，住在古巴国宾馆，当时，我也在那里。我站在走廊上，而他正好也走了出来。那是我们的第一次见面。”2000年9月，江泽民赴纽约参加联合国千禧年首脑峰会，他在一次招待会上第二次见到江泽民。3年后，库恩又在北京听了江泽民关于几个重要问题的讲话。尽管没采访到江泽民本人，库恩却并不觉得有什么遗憾。在他看来，这本书只是传记而非自传，没必要非采访到本人。

为了完成这本书，库恩总是随身带着手提电脑，一有空就开始写作，从周一到周五，他常常工作至凌晨。每当他在吃完饭后一头钻进书房，妻子总会调侃他“又去见江泽民了”。整整4年，3次重写，5次编辑，库恩光资料就搜集了3000万字，第一稿70万字……

2005年，一本47万字的《他改变了中国——江泽民传》出版。首批印刷的20万册，仅10多天就销售一空。为新书做巡回推广时，由于签名数量太多，库恩的手肘甚至有些劳损，“影响了打网球”。

走访中国40多个城市

《他改变了中国——江泽民传》的成功，让库恩有了进一步探寻中国整体形象的想法。他于是带着助手，开始走访中国40多个城市，进行深入的、大规模的调查研究。

就是在这次调研过程中，2005年2月26日，库恩在浙江西子宾馆见到了时任浙江省委书记习近平。习近平向库恩介绍了浙江的经济、历史和文化等方面的情况，并感谢库恩多年来从自己独到的角度研究中国、向世界介绍中国，在中美两国之间搭起了文化的桥梁。

次年3月，库恩再次来到浙江，这一次，他的目的是了解“浙江模式”。虽然是不期而至，但习近平仍挤出时间与他见面。习近平说，自己之所以要这么做，是要“表示我们对库恩先生关注中国、客观介绍中国的感激之意”。

库恩回忆说，习近平在那次谈话中强调了中国自改革开放以来发生的翻天覆地的变化。“‘有句老话，士别三日当刮目相看。你一个月不来，半年不来，中国就会有很大的变化。’他又补充说，‘但如果结合中国悠久的历史来分析，又不会惊讶于它变化之快，因为我们经历了几千年才走到这一步。无论我们怎么看待这一速度，中国的发展变化，至少在一定程度上，是由爱国热情和民族自豪感推动的。’”

让库恩印象最深的是，在谈及如何以最好的方式向世界介绍中国时，习近平提出，中国的情况无法用简单的一句话来描述，或用单一的方法来概括，并借用中国古代寓言“盲人摸象”来说明这个问题。“他把中国富裕的东部沿海比作大象的腿，而将中国广袤的西部比作大象宽阔的后背，认为‘象是一个完整的概念，必须全面地了解，要避免犯盲人摸象的错误’。”对库恩来说，这样的比喻是新颖而有用的，这个说法，他到现在还记得。

接连的调研，让库恩对中国有了更深入的认识。

2007年12月9日，时任中宣部部长刘云山在与库恩的一次会谈中提议，如果由他来写一部关于中国改革30年的书，一定很有意义。库恩知道，这次又说到他心坎上了。

库恩列出了一份庞大的采访名单，每次采访前，他会向被采访对象提供三四十个问题的采访提纲，后者通常会选择其中的二三十个作答。采访结束后，库恩再根据采访录音进行整理，并对其中提及的年份、数字和事实进行核实。

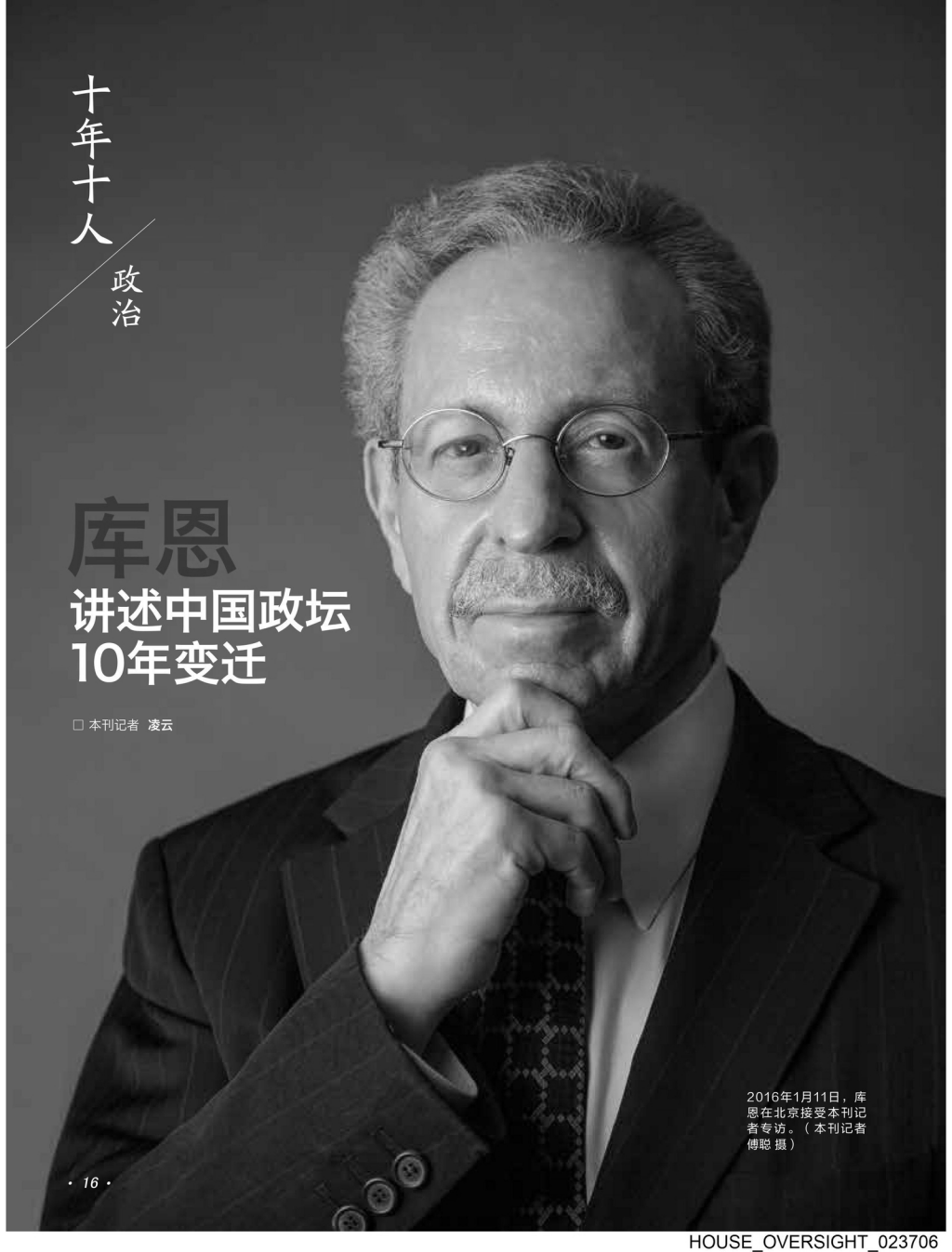
在与100余位省部级官员、企业领袖和专家学者沟通交流，并采访了诸多改革开放的亲历者后，库恩用5个月时间完成了80万字的初稿。“我的家人说，整整一年，他们只能看到我的后脑勺。”

2008年12月，《中国30年：人类社会的一次伟大变迁》中文版在中国发行。第二年，为纪念新中国成立60周年，该书英文版在全球出版发行。截至目前，这本书是唯一由外国人详细描述中国改革开放30年进程的书籍。

HOUSE_OVERSIGHT_023705

库恩
讲述中国政坛10年变迁

□ 本刊记者 凌云



2016年1月11日，库恩在北京接受本刊记者专访。（本刊记者 傅聪 摄）

HOUSE_OVERSIGHT_023706

CNN – Quest Means Business

U.S. and China Agree to Pause Trade War

Robert Lawrence Kuhn, December 3, 2018

CNN

Host Richard Quest: **Robert Lawrence Kuhn is a long-time advisor to Chinese leaders and the author of *How China's Leaders Think*. How will they be interpreting the deal that was done on Friday?**	

CNN

Robert Lawrence Kuhn / RLK: Everybody is pleased that there is the pause; 90 days is very short, of course. We have to look at the short-term, mid-term, and long-term. Let's look at the background to understand where China is today. This is the 40th year, the anniversary, of China's reform and opening up. On December 18th, 1978, Deng Xiaoping made his famous speech, which transformed China from ideologically driven class struggle into economic development. It's a big deal in China; there's a big celebration coming up.	
RLK: President Xi Jinping has said that the first big goal for China, in 2020, is to have a moderately prosperous society, specifically to eliminate all extreme poverty in China. That means they will have taken 800 million people out of poverty. So that's their overview, and so they look at the status quo that they've had with America as something that's good for both sides.	

CNN

RLK: As for America, we have critical issues that we have to deal with: Open markets, IP protection, forced technology transfer, cyber security / cyber theft — there are a lot of issues on the table.	
Quest: The two sides are seeing Friday's deal in very different ways. **RLK: That always happens —** **Quest: But the Chinese —** **RLK: That's diplomacy. That's the definition — we saw that in the spy plane collision in 2001; we saw that in the bombing of the Yugoslavian embassy in 1999.**	

CNN

RLK: Both sides had different interpretations to suit their domestic markets. **Quest: But they're not even admitting, or at least acknowledging, a 90 days. Let alone all this business of, "we're going to buy more cars."** **RLK: Well, look. In China, there is a debate among Chinese economists, what's good for China? Many economists tell me privately, personally, one-on-one, like I'm talking to you right now, that China needs to open its markets, it needs to have IP protection, it shouldn't support state-owned enterprises as much. But they have internal debate.**	

CNN

RLK: Those Chinese economists are pleased to see this pressure going on, but China cannot admit that publicly, because that undermines the rejuvenation of China, the strength of the government, the national pride.	
RLK: We have to understand both sides are speaking to their domestic audiences, but hopefully, when they get together privately, they'll talk business.	

CNN

Quest: Do you believe that they can and or will make the structural changes necessary to get a long-term deal, because it seems as if President Trump is not going to be satisfied long-term with agreeing to buy a few extra bits of this or that of agriculture.

RLK: I totally agree with that, and I think that's right. We're going to have to see. I mean, it's easy to predict 10 years in the future, but not 10 days. So we'll see where we go.

CNN

RLK: But the people in China whom I talk with say they recognize that this time is different. And what they're going to do is they're going to focus on the changes that they believe are good for China. You actually saw that in some of the announcements today. We're going to do the kinds of things that help our domestic economy as well. That sounds like it's a play for their own domestic audiences — to show they're not conceding — but in fact it is really the case.

CNN

Quest: The U.S. president talked about selling large amounts of agriculture to the Chinese, and tariffs on automobiles down from 40% maybe to 0%. This is mercantilist stuff. This isn't "trade deal."

RLK: Totally agree with that. And those are superficial things, they make headlines, they're easy to understand, but they're not the substance of what's happening here.

CNN

Quest: Do you believe that there's a shift in perspective in this, this dinner shifted things? **RLK: I believe there has been a shift; I wouldn't tell you the dinner did it, but over time, there is recognition that this time is different.** **Quest: Thank you, sir. Next time, when it's different, you'll come back and tell us.** **RLK: Absolutely.** **Quest: Okay, good. Good to see you; thank you.**	

From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/14/2016 3:34:18 PM
To: Thomas Jr., Landon[redacted]
Subject: Re: EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because ....

thx

On Mon, Nov 14, 2016 at 10:32 AM, Thomas Jr., Landon <[redacted]> wrote:

The latest thinking from London hedge fund crowd

---------- Forwarded message ----------
From: **Ozan Tarman** <[redacted]>
Date: Mon, Nov 14, 2016 at 9:40 AM
Subject: EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because ....
To:

Classification: Public

EUROPEAN MULTI ASSET COVERAGE MEETING IMPRESSIONS: Eyes on Real Money outflows; Christmas comes early for most of macro players, hedge funds. Absolute majority bet on HRC to win, but majority still made good money because Hillary bets worked as Trump trades.

Wider, steeper core rates, stronger USD, weaker EM is the Rage. The last one, EM, is the big loser out of Trump Reflation Theme. DM over EM and divergence within DM are very much in vogue. All gains of EMBI since March are gone!

For Rates & FX, it does feel like early days of Taper Tantrum trade of 3 years ago. Both dominated by US price action. In both, hedge funds have now caught the moves, play offense & ride the Trump narrative. Real Money is on the ropes, caught long Fixed Income/duration/carry and cannot play defense fearing Outflows.

In Emerging Markets, most outflows are retail, ETF driven. All eyes on next leg of institutions. In equities, banks big winners; FANGs losing. I asked partners 2 questions. 1) Would the "this will be great for business, feel good factor" wave out-run "if real yields go up, equities are a sell" fear. Clients are torn, but the former, bullish camp wins for now, my colleagues suggest. There are skeptics though.

2) In Europe, do fears over Renzi losing & Le Pen winning climb over the big momentum behind banks etc. Again, my equity team suggests, "no, reflation wave may win over Italy referendum anxiety,, for now." Renzi is now widely expected to lose, so a "yes" would be the big surprise trade. And the bigger elephant in the room is Le Pen. If she wins in May, Europe as we know it may really shake.. But for now this is more in the radars of Euro & EBG traders.

Core rates are driven by the speed of TY sell-off. And in G5 FX, the big driver is USD/JPY. The stronger "we should believe in Trump reflation narrative" winds are, the more USD/JPY buyers we see.

Some in Research warn that Trump may succeed in "tax cuts, faster than any infrastructure spending," but few macro are in mood to listen. A few players believe, looking at trade weights of each with US and magnitude of

sell-off, Asia FX may have more weakness to come than MXN. Will copper/infrastructure rally eventually help Chile?

Most macro love NKY, willing to love it more. Bringing it home; fast macro money players are rushing to erase losses, year long pains through wider rates, longer USD, weaker EM, stronger equities.

Real Money is in defensive, remembering Taper Tantrum days, fearing institutional outflows & forced selling of carry hope positions.

Those who want to "fade" Trump rally, seek valuation in EM, believe core rates can tighten to get a breather are in Minority.

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Landon Thomas, Jr.
Financial Reporter
New York Times
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[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Forthcoming (August 2011) *Future Science* edited by Max Brockman, Vintage Press, New York.

Is Shame Necessary?

Jennifer Jacquet

***Jennifer Jacquet** graduated with a master's degree in environmental economics from Cornell University in 2004 and earned a PhD in 2009 from the University of British Columbia, where she now holds a postdoctoral fellowship. As part of the Sea Around Us Project, a joint collaboration between the university and the Pew Charitable Trusts, she researches market-based conservation initiatives related to seafood and other natural resources. With colleagues from the Max Planck Institute for Evolutionary Biology and UBC's Mathematics Department, she is currently conducting a series of games and experiments to study the effects of honor and shame on cooperation.*

Financial executives received almost $20 billion in bonuses in 2008 amid a serious financial crisis and a $245 billion government bailout. In 2008, more than 3 million American homes went into foreclosure because of mortgage blunders those same executives helped facilitate. Citigroup proposed to buy a $50-million corporate jet in early 2009, shortly after receiving $45-billion in taxpayer funds. Days later, President Obama took note in an Oval Office interview. About the jet, he said, "They should know better." And the bonuses, he said, were "shameful."

What is shame's purpose? Is shame still necessary? These are questions I'm asking myself. After all, it is not just bankers we have to worry about. Most social dilemmas exhibit a similar tension between individual and group interest. Energy, food, and water shortages, climate disruption, declining fisheries, increasing antibiotic resistance, the threat of nuclear warfare—all can be characterized as tragedies of the commons, in which the choices of individuals conflict with the greater good.

Balancing group- and self-interest has never been easy, yet human societies display a high level of cooperation. To attain that level, specialized traits had to evolve, including such emotions as shame.[1] Shame is what is supposed to occur after an individual fails to cooperate

[1] R. Boyd & P. J. Richerson, "Culture and the evolution of human cooperation," *Proc. Roy. Soc. Lond. B* 364: 3281-88 (2009).

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with the group. Shame regulates social behavior and serves as a forewarning of punishment: Conform or suffer the consequences. The earliest feelings of shame were likely over issues of waste management, greediness, and incompetence. While guilt is evoked by an individual's standards, shame is the result of group standards. Therefore, shame, unlike guilt, is felt only in the context of other people.

The first hominids could keep track of cooperation and defection only by firsthand observation. Many animals use visual observations to decide whether to work with others. Reef fish in the Red Sea, for instance, watch wrasses clean other reef fish, to determine whether or not they're cooperative, as biologist Redouan Bshary discovered. Bshary went scuba diving off Egypt's coast to observe this symbiotic relationship. Bluestreak cleaner wrasses (*Labroides dimidiatus)* eat parasites, along with dead or infected tissue, off reef fishes in more than 2,000 interactions a day, each of which can be considered an act of cooperation. Wrasses are tempted to eat more than just the parasites, but if the reef fish loses too much flesh in the deal, it will refuse to continue working with the wrasse. Reef fish approach wrasses that they see cooperating with their current clients and avoid the wrasses they see biting off more than they should chew.[2]

Like the Bluestreak cleaner wrasses, humans are also more cooperative when they sense they are being watched. Researchers at the University of Newcastle upon Tyne examined the effect of a pair of eyes on payments for tea and coffee to an honesty box. Alternating images of flowers and human faces were posted above the box in the university coffee room each week for ten weeks; researchers found that people paid nearly three times as much for their drinks in

[2] R. Bshary, "Biting cleaner fish use altruism to deceive image-scoring client reef fish," *Proc. Roy. Soc. Lond. B* 269: 2087-93 (2002).

HOUSE_OVERSIGHT_023721

weeks during which they were exposed to the human gaze.[3]

The feeling of being watched enhances cooperation and so does the ability to watch others. To try to know what others are doing is a fundamental part of being human. So is fitting in. The more collectivist the human society, the more important it is to conform and the more prominent the role of shame.[4] Shame serves as a warning to adhere to group standards or be prepared for peer punishment. Many individualistic societies, however, have migrated away from peer punishment toward a third-party penal system, such as a hired police force, formal contracts, or trial by jury. Shame has become less relevant in societies where taking the law into one's own hands is viewed as a breach of civility.

Perhaps this is why it makes us uncomfortable to contemplate shaming people: Shame invites the public in on the punishment. Consider the scaffolds, scab lists during union strikes, or Nathaniel Hawthorne's *The Scarlet Letter*. Or the proposal made by prominent conservative William F. Buckley Jr. in 1986 to tattoo people with AIDS. These instances of shaming now seem an affront to individual liberty. Getting rid of shaming seems like a pretty good thing, especially in regulating individual behavior that does not harm others. In eschewing public shaming, society has begun to rely more heavily on individual feelings of guilt to enhance cooperation.

Guilt prevails in many social dilemmas, including one area of my own research: overfishing. At the root of the problem of overfishing is the human appetite. Wild fish catches are declining, and many of us seek to avoid the guilt brought on by eating unsustainable seafood.

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[3] M. Bateson, D. Nettle, & G. Roberts, "Cues of being watched enhance cooperation in a real-world setting," *Biol. Lett.* 2:3, 412-14 (2006).
[4] D. M. T. Fessler, "Shame in two cultures: Implications for evolutionary approaches," *Jour. Cogn. & Culture* 4, 2 (2004).

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Here are just a few recent headlines from major newspapers: "HOLY MACKEREL AND OTHER GUILT-FREE FISH" (*New York Times*), "GUILT-FREE SUSHI" (*Christian Science Monitor*), "COD AND CHIPS? MAKE IT POLLOCK IN GUILT-FREE GUIDE TO SEAFOOD" (*The Times* of London), and "A GOOD APPETITE; SEAFOOD, EASY AND GUILT-FREE" (*New York Times*).

It is perhaps unsurprising that a set of tools has emerged to assuage this guilt and, in the case of seafood, reform the appetite.[5] These tools aim to divert demand from one type of seafood toward another. Wallet cards, iPhone apps, and eco-labels tell consumers which fish ought to be and ought not to be eaten. Shoppers in Europe have been given rulers, so that they can measure fish and avoid buying juveniles.

Guilt abounds in many situations where conservation is an issue, not just in the response to overfishing. Harried by guilt, one mother reuses her daughter's bathwater for her own bath. Los Angeles shoppers refuse to buy blueberries imported from Chile, because of the fuel consumed in shipping them. Another woman feels guilty about the natural habitat lost to cocoa cultivation and refuses to buy chocolate, prompting her husband to say that she took the joy out of his Almond Joy.[6] Just as the devout purchased guilt-alleviating papal indulgences in the Middle Ages, guilt-ridden consumers today buy carbon offsets, LED light bulbs, and hybrid cars and can be guided to something approaching sanctimony by books like *The Virtuous Consumer, The Rough Guide to Shopping with a Conscience,* and *The Eco Chick Guide to Life: How to Be Fabulously Green*.

The problem is that environmental guilt, while it may well lead to conspicuous ecomarkets, does not seem to elicit conspicuous results. One supermarket chain introduced signs at the fish counter to show the most and least sustainable seafood: Sales of the green-tagged

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[5] J. Jacquet, et al., "Conserving wild fish in a sea of market based efforts," *Oryx* 44:1, 45-56 (2010).
[6] C. Crawford, "Green with Worry," *San Francisco Magazine,* February 2008.

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"best choice" fish increased an average of 29 percent per week, sales of yellow-tagged "proceed with caution" seafood declined an average of 27 percent per week, but the sales of the red-tagged "worst choice" seafood—i.e., the heavily overfished species—remained the same.[7] Between 1980 and 2008, sales of pesticides increased 36 percent in the state of California, the birthing ground of the organic food eco-label.[8] Despite sporadic instances of such measures as car-pooling and use of cloth grocery bags in lieu of plastic-or-paper, the demand for oil in the U.S. has grown 30 percent overall and 5 percent per capita since 1990.[9] The positive effect of idealistic consumers does exist, but it is masked by the growing demand and numbers of other consumers.

Guilt is a valuable emotion, but it is felt by individuals and therefore motivates only individuals. Another drawback is that guilt is triggered by an existing value within an individual. If the value does not exist, there is no guilt and hence no action (e.g., sales for red "worst choice" seafood remained the same). What if the aim were to promote a value felt by the group but not necessarily by every individual in the group? Many problems, like most concerning the environment, are group problems. Perhaps to solve these problems we need a group emotion. Maybe we need shame.

Shaming, as noted, is unwelcome in regulating personal conduct that does not harm others. But what about shaming conduct that does harm others? The U.S. National Sex Offender Registry provides an online database with the names, photographs, and addresses of sex offenders in every state. In March 2010, Nebraska lawmakers approved a bill that allows the

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[7] E. Hallstein & S. B. Villas-Boas, "Are consumers color blind? An empirical investigation of a traffic light advisory for sustainable seafood," http://www.escholarship.org/uc/item/29v6w5sp#page-11 (2009)
[8] Based on data available from the California Department of Pesticide Regulation.
[9] This is calculated from DOE statistics. U.S. oil consumption in 1990 was 17 million barrels per day and 22.2 million barrels per day in 2010.

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state to publish online the names and addresses of people owing more than $20,000 in taxes. Judges in various states issue shaming punishments, such as sentencing pickpockets and robbers to carry picket signs that announce their crimes to the public. These instances of shaming might deter bad behavior, but critics like Martha Nussbaum, a political philosopher at the University of Chicago, argue that shaming by the state conflicts with the law's obligation to protect citizens from insults to their dignity.[10]

What if government is not involved in the shaming? A neighborhood in Leicester, England, has a YouTube channel dedicated to neighborhood issues, including catching "litter louts." A collection of videos shows individuals caught in various acts of littering, and if someone recognizes the litter lout, he or she can e-mail the lout's identity to the neighborhood management board, which they pass on to City Council so that fines can be issued and the video removed. In 2008, the *Santa Fe Reporter* published the names and addresses of the top ten water-using households in the city (first place went to a homeowner who used twenty-one times the household average). The tennis club near my apartment in Vancouver, B.C. publishes the names of people who do not pay their dues. In each of these cases, the activity of the individual compromises the community. In none of them is the state involved in the shaming. Is this a fair use of shaming? Is it effective?

Let's deal with the latter question. Shaming might work to change behavior in these cases, but in a world of urgent, large-scale problems, changing individual behavior is insignificant. Small changes, adopted by one individual at a time, can make a difference in a problem only when the problem is small or there is lots of time to solve it (for instance, in

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[10] M. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton. NJ: Princeton University Press, 2004).

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marginalizing politically incorrect words). Many of today's social movements, like the industries they seek to revolutionize, must make big changes quickly—which is best accomplished by directing efforts upward toward institutions. I call this vertical agitation. The *Santa Fe Reporte*r listed the top ten commercial water users, in addition to the top ten households. The first of these offenders, the city of Santa Fe, used 195 times more water than the number-one household offender. Imagine the relative difference in getting the city to commit to water-saving techniques as compared to reforming a single household.

Guilt cannot work at the institutional level, since it is evoked by individual scruples, which vary widely. But shame is not evoked by scruples alone; since it's a public sentiment, it also affects reputation, which is important to an institution. At the 2004 meeting of the World Economic Forum in Davos, Switzerland, leading CEOs issued a press release about how corporate brand reputation outranked financial performance as the most important measure of success. For an example of how shame and reputation interact, consider restaurant hygiene cards, introduced in 1998 by Los Angeles County as a shaming technique in the interests of public health. Restaurants were required to display grade cards that corresponded to their most recent government hygiene inspection. The large grade in the window—A, B, or C—honors restaurants that value cleanliness most and shames those that value it least. The grade cards have apparently led to increased customer sensitivity to restaurant hygiene, a 20-percent decrease in county-wide hospitalizations for food-borne illnesses, and better hygiene scores for county restaurants.[11]

Recall that in our early evolution we could gauge cooperation only first-hand. As group size got bigger, and ancient humans grappled with issues of necessary cooperation, the human brain became better able to keep track of all the rules and all the people. The need to

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[11] Zhe, G. and P. Leslie. 2005. The case in support of restaurant hygiene grade cards. Choices 20(2): 97-102. http://www.stanford.edu/~pleslie/Jin%20and%20Leslie%20Choices%202005.pdf

HOUSE_OVERSIGHT_023726

accommodate the increasing number of social connections and monitor one another could be, according to the social grooming hypothesis put forward by British anthropologist Robin Dunbar, why we learned to speak.[12] Then, 5,000 years ago, another tool: writing. Language, both oral and written, allowed for gossip, a vector for social information. Research carried out by Ralf Sommerfeld of the Max-Planck Institute for Evolutionary Biology and his colleagues demonstrated that in cooperation games that allowed players to gossip about one another's performance, positive gossip resulted in higher cooperation. Of even greater interest, gossip affected the players' perceptions of others even when they had access to firsthand information.[13]

Human society today is so big that its dimensions have outgrown our brains. We have an increasing number of people and norms. What tool could help us gossip in a group this size? Nowadays we keep track of and distribute unprecedented amounts of information via our computers: for example, citizens, journalists, and interest groups can access the U.S. Environmental Protection Agency's Toxics Release Inventory database online to identify and shame polluters. Between the database's inception in 1988 and 1995, releases of 330 toxic chemicals on the list have declined by 45 percent.[14] After the retailer Trader Joe's was unresponsive to requests by the nonprofit group Greenpeace to stop selling unsustainable seafood, Greenpeace coordinated singing fish telephone calls or demonstrations at every Trader Joe's across the nation using the Internet. The Trader Joe's CEO decided to comply with Greenpeace demands by dropping several overfished species and agreeing to source all seafood from sustainable sources by the end of 2012.

We can use computers to simulate some of the intimacy of tribal life, but we need

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[12] See esp. his Grooming, Gossip and the Evolution of Language (Cambridge, MA: Harvard University Press, 1997).
[13] R. H. Sommerfeld, et al., "Gossip as an alternative for direct observation in games of indirect reciprocity," *Proc. Nat. Acad. Sci.* 104:44, 17435-40 (2007).
[14] Fung, A. & D. O'Rourke. 2000. Reinventing environmental regulation from the grassroots up: Explaining and expanding the success of the Toxics Release Inventory. Environmental Management 25(2):115-127.

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humans to evoke the shame that leads to cooperation. In addition, the emergence of new tools—language, writing, the Internet—cannot completely replace the eyes. Face to face interactions, such as those outside of Trader Joe's stores, are still the most impressive form of dissent.

So what is stopping shame from catalyzing social change? I see three main drawbacks:

(1.) *Today's world is rife with ephemeral, or "one-off," interactions.* When you know you are unlikely to run into the same situation again, there is less incentive to change your behavior. Research shows, however, that if people know they will interact again, cooperation improves.[15] Shame works better if the potential for future interaction is high. In a world of one-off interactions, we can try to compensate for anonymity with an image score, such as the hygiene grade cards or EBay's seller ratings, which sends a signal to the group about an individual or an institution's degree of cooperation.

(2.) *Today's world allows for amorphous identities*. Recall the reef fish that observe Bluestreak cleaner wrasses in the Red Sea. The wrasses seem to know they are being watched, and certain wrasses will build their reputation on the small reef fish, allowing the big reef fish to observe their cooperative behavior with the small fry. Then, when the big fish comes in for its own cleaning, these wrasses eat some of the big reef fish's flesh along with its parasites, fattening themselves on their defection. To add to the confusion on the reef, False cleanerfish (*Aspidontus taeniatus*) make their living by looking very similar to the Bluestreak cleaner wrasses. They are able to approach reef fish under the guise of cooperation and then bite off pieces of fish flesh and swim off.

Many of our interactions these days are similar to the fish cleanings in the Red Sea. It's

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[15] M. Milinski, D. Semmann, & H. Krambeck, "Reputation helps solve the 'tragedy of the commons,' " *Nature* 415, 424-26 (2002).

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hard to keep track of who cooperates and who doesn't, especially if it's institutions you're monitoring. Enron, which in 2001 filed one of the largest bankruptcies in U.S. history, hid billions of dollars in debt in hundreds of shell firms, which bought poorly performing Enron stocks so that Enron could create a fraudulent company profile and mislead its auditors. Lehman Brothers, in the years before its 2008 collapse, used a smaller firm called Hudson Castle (of which it owned 25 percent) to shift risky investments off its books so that Hudson Castle, not Lehman Brothers, could absorb "headline risk." Which leads us to shaming's third weakness.

(3.) *Shaming's biggest drawback is its insufficiency.* Some people have no shame. In the research my colleagues and I have conducted on first-year students, involving games that require cooperation, we have found that shame does not encourage cooperation among those players who are least cooperative. This suggests that a certain fraction of a given population will always behave shamelessly, like the False cleanerfish, if the payoff is high enough. The banks may have gone bankrupt, but the bankers got their bonuses. There was even speculation that publishing individual banker bonuses would lead to banker jealousy, not shame.

My colleagues and I conclude that ultimately shame is not enough to catalyze major social change. Slavery did not end because abolitionists shamed slave owners into freeing their slaves. Child labor did not stop because factories were shamed into forbidding children to work. Destruction of the ozone layer did not slow because industries were ashamed to manufacture products that contained chlorofluorocarbons. This is why punishment remains imperative. Even if shaming were enough to bring the behavior of most people into line, governments need a system of punishment to protect the group from the least cooperative players.

Finally, consider who belongs to the group. Today we are faced with the additional challenge of balancing human interests and the interests of nonhuman life. How can we

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encourage cooperation between all living things when the nonhumans have no voice? Successful species will likely be those that recognize, implicitly or explicitly, life's interdependency. If humans are to succeed as a species, our collective shame over destroying other life-forms should grow in proportion to our understanding of their various ecological roles. Maybe the same attention to one another that promoted our own evolutionary success will keep us from failing the other species in life's fabric and, in the end, ourselves.

HOUSE_OVERSIGHT_023730

Teaching Minds

How Cognitive Science Can Save Our Schools

HOUSE_OVERSIGHT_023731

Teaching Minds

How Cognitive Science Can Save Our Schools

ROGER SCHANK

TEACHERS COLLEGE PRESS

Teachers College, Columbia University
New York and London

HOUSE_OVERSIGHT_023733

Published by Teachers College Press, 1234 Amsterdam Avenue, New York, NY 10027

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Library of Congress Cataloging-in-Publication Data

ISBN 978-0-8077-5266-1 (paper)
ISBN 978-0-8077-5267-8 (hardcover)

Printed on acid-free paper
Manufactured in the United States of America

18 17 16 15 14 13 12 11 8 7 6 5 4 3 2 1

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For Milo (who can now read this) and for Max, Mira, and Jonah

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Notes

About the Author

Preface

My father always told me that I would be a teacher. He didn't mean it in a nice way. My father talked in riddles. As the only child in the house, I had plenty of time and opportunity to figure out what he was really saying. This was it: I am afraid that like me, the best you will be able to do in life is to be a civil service worker. He was also saying: If he had realized he was going to be a civil service worker, at least he could have been a teacher, which he might have enjoyed. He wasn't really talking about me at all.

I never had any intention of being a teacher. I didn't particularly like school and later, when I became a professor, the part of the job I disliked the most was the teaching. One might wonder how I wound up being a professor if I disliked teaching, and one might wonder why I am writing a book about teaching if I dislike teaching. One also might wonder whether I still dislike teaching. Yes. And no. It depends on what one means by teaching, which is, after all, what this book is about.

The other day my 3-year-old grandson Milo told me he was going to teach me how to throw rocks. It seemed an odd idea. What could he mean by this? To Milo, "teach" means to tell someone what to do and how to do it and then have the person do it too. Teach is part of tell plus imitate for Milo. Milo is 3. It is not too surprising that this is what teach means to him. It is a little surprising that he thinks he should be his grandfather's teacher, but that is another issue. But it is really no shock that Milo thinks this is what teach means. It is what nearly everyone thinks teach means. The commonly accepted usage of teach is tell and then have the person who was told, do what he was told. This certainly is not what teach ought to mean, or more important, is not what good teaching is. And, every good teacher knows this. The problem is that the system that employs teachers doesn't know it and more or less insists that Milo's definition be the one that is followed.

Actually, I am being too generous here. Milo's view, namely, that after he tells me, I will do what he has said, is a better definition of

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teaching than the one actually employed commonly today. Milo at least thinks that the end result will be the student doing something that the teacher did. In school, teach usually means helping the student to know something that the teacher told him. Milo doesn't know about that definition of teaching yet since he hasn't been to school, but, unfortunately, he soon will.

I have been thinking about teaching for more than 50 years. First I thought about it when my father said that was what I was going to be. Then I thought about it as I watched my teachers teach me and, no less important, watched my father teach me.

My father eventually retired from his civil service job and became a junior high school teacher in Harlem. He loved his new job and, I have to assume, became a good teacher. I say it that way because he was certainly not a good teacher for me, at least not when he thought he was trying to teach me. I remember him trying to teach me algebra and it making no sense to me whatever. I remember him teaching me sports and I mostly think of him as being totally frustrated with my inability to perform as well as he had hoped. (Being a jock was a big thing to my father.)

I did fine in algebra without his help and, in fact, became a math major in college. But, as I look back at it, my father was my first and best teacher. Why do I say this after all the bad things I have just said? Because my father was at his best when he wasn't teaching but was just saying what was on his mind and arguing. He often talked about history because he liked history. And when he talked about history and I asked questions, he became a good Socratic teacher. He forced me to think and question in our discussions. The conversations were often very heated but also were a highlight of my intellectual life at that time. My father didn't teach me anything except how to think. That's better than algebra, actually. For this I am grateful.

So, I thought about teaching then and I thought about it again when I went to college. As part of my father's conversations with me about life, he talked a great deal about his own experiences. His mother sent him to New York City to live with his aunt in Brooklyn and to go to college. He was 15 and had, until that time, spent his entire life on a farm/hotel run by his parents in upstate New York. He was unprepared for the city, had no money, missed his family, and had no idea why he wanted to go to college at all. Did I mention that he was 15? He had graduated first in his class (a class of 16, I

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think) and had skipped a few grades on the way. Suddenly he found himself at New York University, which in those days was located in the Bronx.

This is what he remembered most about college in 1923: Apart from the poverty stories, the "how hard he had to work to support himself" stories, the stories about watching the Yankees from the elevated train and wishing he could go to a game, he remembered that teachers lectured, that you had to memorize what they told you and then tell it back to them on a test. He thought college was stupid, but he assured me (in 1960) that college surely had changed by now and that teachers wouldn't still be doing this. Oh yeah? In 1962, when I entered college, they were doing exactly that. And, in 2000, when I retired from 32 years of professoring, not that much had changed.

So I was thinking about teaching before I got to college and I was thinking about it while I was a professor and I am thinking about it now that I have, for the most part, finished teaching. To make sure I have been thinking about it correctly, I asked former Ph.D. students of mine, (now tenured professors mostly and some industry executives) what they had learned from me while they were spending 4–7 years studying with me. I thought their answers might help me think about teaching in a new way. I sent an e-mail to maybe 20 former students whose e-mail addresses I happened to have, and most responded. Here are some excerpts.

> 1. I remember quite specifically a homework presentation I made in your class. When I presented it in class, I was a junior in college, and all the other students in that class were grad students. When I was done you smiled at everyone (a rare event) and said, "Anyone care to follow that act?" Your clearly heartfelt endorsement of my little research product was a key moment in my coming to trust my own ideas. I just submitted a $16.7 million proposal to NIH that would create the first all-computational genome center. The kind of chutzpah embodied in that proposal is one consequence of my experience with you.
>
> 2. The way you assigned me to a project—you sent me to each existing project for 2 weeks until I hit on a project with a good fit (I was enthusiastic and coherent talking about it). I used this technique when I was assigning people at Accenture.

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3. You taught me to teach by telling students stories that are meaningful to you. I think to be a real teacher you have to let yourself be vulnerable. So the students can see that you are a human with feelings and fears and goals. And then being able to say to the students: This is the way I do it; it fits who I am; it helps me be successful; and don't let anyone tell you that you can't do something.

4. You taught me that not everyone will like you no matter what you do and no matter how hard you try. I came back from a Deloitte course evaluation, and the deans just hated me. Instead of being upset with me, you assured me that you have to just say what you believe, and some people won't like you, and oh well.

5. You taught me to start by collecting data. I recall watching most of your papers start by collection of data. I recall watching your criticisms of work that was just abstraction on abstraction, with no data at its roots.

6. You once told me to imagine that my mother was my audience—if I could explain it to my mother, I could explain it to anyone. Incredibly, this seems to work for every audience out there. So I've passed that tip along to my students and it seems to work for them too.

7. I remember that you used to tell us we need to be excited to get up and go to work in the morning, that that was the most important thing. For some people, it's because of the people you will be with. For some, it is because of the passion about whatever it is. But, in general, I still give people that advice (and it is advice I've also been giving my own kids). You have to love what you are doing.

This is just a sample but it reflects what these former students, now all in their 40s and 50s, remember about what I taught them. Hadn't they learned any facts from me? Didn't I teach them some real stuff? Some said in passing that they had learned the actual content of the subjects I taught as well, but that that wasn't as important to them as the things they chose to write about. Why not?

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There are two important answers to this question and those answers are what this book is really about. My father offered these same answers to me, not explicitly by any means, when I thought about the good and bad of having him as my teacher. When he tried to teach me facts, I learned nothing much. When he engaged my mind, I learned a lot. As a professor I never forgot this lesson. I rarely tried to teach facts, upsetting many a student along the way. I just argued with them, or encouraged them. I never told them much, except maybe some good stories.

So here are the answers:

The first is:

Teaching isn't what outsiders to the profession think it is.

The profession I am referring to here is, of course, the teaching profession.

The second is:

Learning isn't what outsiders to the profession think it is.

In this case, the profession I am referring to is not teaching at all.

Let's start with teaching.

A professor friend of mine once asked her class what they thought a professor's biggest fear was while teaching a class. They all agreed it was not knowing the answer to a question a student might ask. When she told this story to a group of professors, they all laughed out loud.

Why am I telling this story? Because a student's view of teaching varies greatly from a teacher's view. No teacher worries about not knowing the right answer to something a student will ask. You can always fake it (say—*What do you think?* or, *Class, can you help here?*) if you think it is important, but answers don't matter very much. Teachers are not supposed to be encyclopedias. They are supposed to be something else. The question is: *What?*

My students' responses above give a hint. Teachers are supposed to be people who help students find their interests in life, think about

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how to make decisions, understand how to approach a problem, or otherwise live sensibly. Teachers are never shocked to be asked to provide personal or professional advice to a student having a problem—any problem. If one takes one's job seriously, teaching means being available to help. But this important advisory job is confused by lesson plans, and class hours, and lectures, none of which matter very much.

Why do I say that these things don't matter very much? This is the essence of what this book is about—the move from content-based instruction to cognitive-based learning, assisted by good teaching. This means we will have to define this "new" kind of learning (it's not really new, of course, just new to schools) and the "new" kind of teaching that is a natural consequence of using this new learning method.

Most teachers understand and appreciate that delivering the required material is not their real job, at least it is not the reason they signed on in the first place. The employers of teachers, on the other hand—administrators, governments, department heads, and so on—expect certain material to be covered. Exciting students is not on their worry list. This is a big problem for teachers and for students, and one that we will address here.

But my more serious concern is our conception of learning, not teaching. Teaching follows one's conception of learning so getting learning right is of prime importance. When I said earlier that outsiders to the learning profession wouldn't get the real point, I was being ironic. There is no learning profession. Why not?

In 1989, I moved from Yale to Northwestern to establish a new institute, funded by Andersen Consulting, devoted to issues of changing training and education by the use of new technologies. I needed a name for the institute and came up with The Institute for the Learning Sciences. I made up the term *learning sciences*. There was no such field in academia. Most people thought I meant we were planning to work on how people learned science. The only academic fields that "studied" learning were psychology and education. Psychology, being an experimental field, allows faculty to work only on experiments about learning that provide data in a controlled environment. Education faculty study how schools work and very rarely think about learning outside of the school context or in a way different from the paradigm already extant in schools. I wanted to create a learning profession. In 1989, there certainly didn't seem to be one.

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Today this is less true. Cognitive science, a field I also had a big part in creating, has become more important in the academic world. Training, and e-learning, the first new field to come about as a result of our work at my new institute (for better or for worse, I am not too fond of most e-learning work) have become more important to think about within the academic context, in part because online courses are seen as potential revenue producers.

So, while there is still no learning profession per se, there is much interest in what learning is about. This book is meant to address the issue of what learning really is, in or out of school, and to answer the question: How does learning really work? The questions that follow from the answer to that question are:

- What kinds of learning situations occur naturally?
- How can we focus education (and training and e-learning) on those types of situations in a new paradigm?
- What would teaching look like in this new paradigm?
- If what we know about how learning works is antithetical to how school works, then what can we do?

Answering these questions is one goal of this book.

Another goal of this book is to think seriously about what it means to teach. Typically, we look at teaching in precisely the way that our system forces us to look at it. There are subjects and there are experts, and experts talk about their subjects to students who listen to what they have to say. This idea is not only archaic—it is wrong. In the history of humankind, teaching could never have looked this way.

Until recently, teaching always meant apprenticeship. We are set up to be apprentices, to learn by doing with help from a mentor. We have done this since the beginning of time. When learning became academic in nature, when students were expected to become scholars, all this changed—and it didn't change for the better. Teaching started to mean talking, and talking is a terrible way to teach. People aren't really that good at listening, after all. Small children don't listen to their parents. They may copy their parents. They can be corrected by their parents. They may be impeded from doing something by their parents. But listen? Not really. We listen in order to be entertained, not in order to learn.

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This lack of understanding about what learning really is like, and what teaching must be like in order to be useful, has caused us to set up school in a way that really does not work very well. When students complain about school, when politicians say school isn't working, we understand that there is a problem. But we don't understand what the problem is. We think we can fix schools by making them more friendly, or safer, or paying teachers better, or having students have more say, or obsessing about test scores, but none of this is the case.

The problem with schools lies in our conception of the role of school. We see school as a place to study academics, to become a scholar, when in fact very few students actually want to become scholars or study academics.

As a society we have gotten caught up in a conception of school from the late 1800s that has failed to change in any significant way, despite the fact that universal education has made the system unstable. Universities dominate the discussion, and everyone listens to what academics have to say because they don't see the alternative or know whom else to listen to. But, if we understand how learning actually works, and how teaching actually should work, the alternative becomes much clearer.

It is establishing that clarity that is my goal in this book.

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CHAPTER 1

Cognitive Process-Based Education

> Education is an admirable thing, but it is well to remember from time to time that nothing that is worth knowing can be taught.
>
> —Oscar Wilde

Learning begins with a goal. However, when we think about education and school, we often forget this. Someone, somewhere, decides that a student must learn about Napoleon, but fails to ask how such learning might conform to a goal that the student consciously holds. We don't forget this when we try to teach a child to walk or talk, because we know that the child does want to learn to do these things. When we teach a child to hit a baseball, we usually determine beforehand that the child wants to learn to do this. But, we forget this simple idea of goal-directed learning as soon as we design curricula for schools. Who cares if the child wants to learn long division? Make the child learn it. It is very important. Full speed ahead!

Somewhere along the way, many students get lost. They may get lost in high school, or in college, or in job training. But somewhere they learn to shut off their natural learning instincts, the ones that drive them to improve because they really want to accomplish something. Instead they try hard to do what they were told to do—they study, they pass tests, and eventually their love of learning is gone. The feedback that they previously have gotten from accomplishing a real goal, one that they truly had held, has been replaced by pleasing the teacher, or getting a good grade, or progress in their goal of getting into a "good college."

Designers (and teachers) of courses must contend with this truth: The students that you have may not want to learn what it is that you want to teach.

What to do?

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First, we must establish whether students can learn whatever it is that you want to teach. I always wanted to teach my daughter to throw a ball properly. She threw a football astonishingly well at the age of 6. But, she never got it about how to throw a softball. I don't know why. She just couldn't learn to do it right. She can't do math either. Believe me, I tried.

Second, we must determine whether what you want to teach can be taught. Not everything can be taught. It is hard to learn to be a nice guy if you are inclined to be nasty. You can learn to be nicer, or at least to fake it, perhaps, but certain things are hard to learn after a certain age. You can teach a 2-year-old to be nice—a 22-year-old is another story.

Third, we must figure out what method of learning actually would teach what we want to teach. This is an important question that is made more important, in part, by the fact that the learning methods available in schools tend to be of a certain type. The things that schools desire to teach are of a type that conforms to the available methodologies for teaching. Content that lies outside the range of the currently available methodologies typically is not considered something worth teaching.

Fourth, we must decide whether a selected learning methodology actually will work, given the time constraints and abilities of the students, and other constraints that actually exist. This is, of course, the real problem in education. It is easy to say that students would learn better if they had real experiences to draw upon. This isn't that hard to figure out. What is hard is implementing this idea within the time constraints of the school day and the other demands of the school year.

Fifth, we must determine a way that will make what you want to teach fit more closely with real-life goals that your students actually may have. By real-life goals I mean things like walking and talking (and later driving). Why is it that teachers, or more accurately school systems and governments, want to teach things that are not in accord with a student's real interest? While we argue about how best to teach algebra, no one ever asks what to do if a student doesn't want to learn algebra. The question is so weird; the possibility that you could skip algebra because it doesn't interest you is so remote that we don't even think about this in any way. What is the real cause of this problem? Why can't we just let students learn what interests them? Are the people who run schools simply out of touch with how learning really works or how actual students behave when faced with something they

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don't want to learn, or is something else more complex going on?

I will summarize these five issues as follows:

ABILITY
POSSIBILITY
METHODOLOGY
CONSTRAINTS
GOAL ALIGNMENT

School is subject-based and, further, those subjects are predefined and agreed upon by those in charge. Without giving a history of how this state of affairs came to be,[1] or why it is an issue, it is first necessary to note that it is the case. I say this because when we were students in school, we accepted the fact that school was the way it was, and we assumed that it was the way it was supposed to be. We may not think each subject we learn is valuable or interesting, and perhaps we long to learn different subjects, but never do we hear people suggest that there shouldn't be subjects in school at all. This is a very difficult idea to swallow. There have always been subjects. What else would there be? What would it mean to not have subjects?

Answering this question is the aim of this book. We need to understand what goes on in schools and what might be preferable. The issue really is not schooling at all. The real issue is how learning actually takes place in the human mind.

Ask a student how he is doing in school and he will tell you the subjects he likes. *I like English but I am bad at math,* he might say. This is such a normal sentiment among students that we never think about how weird a sentiment it really is. We don't ask: *How are you doing at life?* We could ask that of a teenager and she might say: *I am good at dating but bad at driving.*

But, actually, you would never hear teenagers say something like that. This is weird because, in general, dating and driving are much more important subjects in a teenager's world than English and math. But they don't talk about whether they are good at it or bad at it in the same way.

They continue to practice and get better at those things because they care about them. Saying, *I am bad at math,* means, in essence, *. . . and I don't care and have stopped trying because I don't see the point.* Saying, *I am good at English,* typically means, *I am getting a good grade in English.* This state of affairs defines the main problem in education:

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> There are subjects that are school subjects and there are subjects that are life subjects and teenagers can tell the difference. They work harder at the life subjects.

And, what is the difference between these two kinds of subjects? Goals. It is as simple as that.

Instead of simply saying what is wrong with schools and what teenagers are really like in school, I want to take a different tack.

Some teenagers wake up in the morning wanting to learn history or algebra but they are a very small minority of the school population. There is no minority, however, when it comes to dating or driving for teenagers. They all want to do these things. So the question I want to ask is:

> Are there other things that all teenagers want to do and are those things connected in some way with learning?

Or, to put this another way, if school had been designed around something other than subjects, what would it have been designed around? Driving and dating, which we know are winners in a teenager's world, could be seen as subjects, or they could be seen as instances of something else, and that something else might be something important to learn.

Students everywhere might want to learn whatever that is and they would work hard to learn it. If we can turn the question around in that way, maybe we can design better learning situations for everybody.

So, the question is:

> What are driving and dating instances of, with respect to learning?

Or, to address this from the cognitive science point of view:

> What is it that students are doing when they learn to drive and date that they might be getting better at while doing those things?

Can we view whatever it is they are getting better at as an example of the kinds of things we should want to teach and that students should want to learn? Answering these questions will allow us to

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look at education in a new way. We need to think about how people actually learn, regardless of the subject, in order to address them.

Let's think about dating, then. I was never any good at it as a kid. I know how the non-cool guys feel. But, later on, much later on, I got very good at it. So, I must have learned something. What?

What was I bad at as a kid? Meeting girls, for one thing. Other kids could do it easily. I always needed to be fixed up.

Talking to girls, for another. I hardly knew any girls. I went to an all-boys high school. I was 16 when I went to college and the other freshmen were 18, so that didn't help either. In other words, I had no confidence.

But mostly, I had no idea what to say to a girl. What did they talk about?

And, one more thing. I really didn't get the point. I didn't know why one wanted to go out with girls anyway. I mean I eventually got the idea, at least I think I did.

Why am I saying it this way? I am trying to get an insight into the learning process and I am a fine example. I didn't know how to do it and then I did. I didn't get the point and then I did, sort of. So I must have learned something between the ages of 16 and 60. What?

Here are some things I learned:

- Human relationships are important, but they aren't easy to establish or maintain. They require work.
- The work involves, among other things, learning how to listen and respond to the needs of another human being. It involves subjugating one's own interests from time to time for the interests of another.
- Girls, and later women, feel good. Being with someone who loves you feels good. Learning to love feels good. More than feeling good, these things are critical for staying alive. This is not so obvious when you are surrounded by love from your family. But eventually you are alone, and alone is not so much fun.

As this is not a chapter on love, I will stop there. Suffice it to say that I learned how to meet girls, how to gain their interest, and how to form relationships with them. I also learned why I wanted to do that.

Now let's see what we have learned about learning from my little diversion into teenage angst.

We have learned that learning about how other people behave is very important.
We have learned that learning about one's own emotions and feelings is very important.
We have learned that building confidence is very important.
We have learned that learning to listen is very important.
We also have learned that learning how to express oneself is very important.

Now let's go back to discussing learning.

Why is it that teenagers are more interested in thinking about dating than they are in thinking about algebra? Why is it that they don't rate themselves on their success in dating in the same way as they do when they are discussing how they are doing in science?

What do teenagers know about learning that their school doesn't know?

This is it:

Teenagers know that the issues I have mentioned above will be important for them for the rest of their lives in a large variety of arenas, not just dating.

No matter what they do in life they will need to form relationships, assess their own abilities, gain confidence through practice, learn to listen, learn to love, try things out and see how well they work, and learn why they do what they do. To put this another way:

Dating is way more important than algebra and every teenager knows it.

Dating is much more important not because teenagers have raging hormones and they crave sex, as this phenomenon often is described. It is important because what they learn while dating serves them in many areas in life and relates strongly to who they will be and how well their lives will go.

Algebra relates to none of this and they know that too.

So, let me ask a simple question:

If we must have subjects in school, why wouldn't dating be rated as way more important than mathematics?

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The answer to this is simple enough. School was not designed to help kids live better lives. That was never the point. But shouldn't it be?[2]

From a cognitive growth point of view, school wasn't even designed to teach us things that relate to learning per se.

Scholars designed the subject matter of the current school system. You hear sportscasters describe football players as *scholar-athletes*. Really? Scholars? Why would that be what we are seeking to create? There are only so many jobs for scholars, and while scholarship is very nice, it ought not be the goal we seek in school in a system of universal education.

Yes, but dating? Is that the subject I am proposing? Really?

Let me explain the real issue here. Take a look at the items I mentioned above.

We have learned that learning about how other people behave is very important.
We have learned that learning about one's own emotions and feelings is very important.
We have learned that building confidence is very important.
We have learned that learning to listen is very important.
We also have learned that learning how to express oneself is very important.

Now, I will transform these slightly:

Students need to learn about how other people behave and why, and they need to learn how to interact with different kinds of people.
Students need to learn about their own emotions and feelings and how to deal with them.
Students need to learn how to rely on themselves and feel confident in their own abilities.
Students need to learn how to listen to others and really hear what they are saying.
Students need to learn how to express themselves effectively.

Now this list doesn't seem so crazy, does it? In fact, most parents will tell you that they try very hard to teach all these things to their children. So one argument might be that the school doesn't have to do it, since parents do it.

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Another argument might be that if the schools worked on these issues, they would have students memorize the 12 principles for building self-confidence and learn to express themselves by analyzing classics in world literature.

Here is the key point:

> These issues, the ones that could be learned from dating, transcend all aspects of our lives.

And, more important, students know this. I started with the idea that learning begins with a goal. The points I listed above are goals that teenagers actually have. They would not have to be talked into those goals. Moreover those goals are, as all students know anyway, way more important than algebra. They aren't interested in becoming scholars.

Now let's consider the cognitive science behind this. Everything we do as human beings is goal-directed. We go for a walk for a reason, we shower for a reason, we get a job for a reason, we talk to people we meet for a reason. We pursue goals as soon as we are born. We try hard to learn to walk, talk, get along with our family, get our needs satisfied, and find out what we like and what we don't like. We do this from birth. If school related to the goals that children actually had, that they were working on at the very moment that they entered school, school would seem like a natural and helpful experience. Students wouldn't stress about satisfying their teachers any more than they stressed about satisfying their parents when they were learning to walk and talk. Yes, they want to please their parents, but that is not exactly the same thing.

People know what their goals are and they know when something they are being offered, a parasailing lesson or a pomegranate, for example, doesn't fit with their goals. They can be convinced to try out a new activity that they believe will not satisfy any of their goals, but for the most part it is difficult to convince them that weird things that were not on their goal list actually should be on the list. We say things to students like, "You will need this later." But this is usually a bold-faced lie. You don't need algebra later. Making up nonsense convinces nobody.

There is a more important issue here. Later on in this book I will detail the 12 kinds of learning that make up what it means to learn. If

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you get good at learning these things, you get good at what life has to offer. The list above is a partial list of the group of learning processes that I detail in Chapter 4. It is really quite important. I have used dating as a simple way of explaining it because no one has to explain why that matters to a teenager. Teenagers know that they have to learn the processes that I discuss in Chapter 4. As things are now, these important issues are not considered significant enough to deal with seriously in school. World history is always considered more important. But why should that be the choice?

Earlier, I mentioned that students want to learn how to drive as well as how to date. This is a pretty universal goal that teenagers have so we should ask of it as well whether it is important and what it might be an instance of that is inherently significant in real life.

On the surface, driving seems a skill that is an important part of daily life. So, one is led to ask why driving isn't a school subject? The answer is that it is. Driver's education has been taught in schools for many years. Not every school offers it, but many do. So what is the problem? It is just a useful skill, not a scholarly subject, so surely I am not suggesting that it is more important than physics. That is, of course, exactly what I am suggesting.

In our test-driven society, when driver's ed is taught, it is taught with a clear goal and a clear notion of success. When a student has passed the tests and gotten her driver's license, everyone is satisfied.

Well, not everyone. I was once called in on a consulting assignment for a university hospital that was working on a study to prevent teenage car accidents. The study was funded by an insurance company that would have been happy to pay out less in damages and, presumably, also thought fewer dead kids would be a generally good thing. What is the problem?

Students may have their licenses but they don't know much about driving and responsibility. It wouldn't be a shock to anyone to know that kids drink and drive, text message and drive, and generally yell and scream and goof around while driving. They often die from this behavior. Could we teach them not to do that? The answer always seems to be to put up posters that say don't drink and drive and to make them watch scary movies about car accidents. The school system strikes again.

If we tell them, then they will do it, never seems to work, but we keep trying.

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I often have used the Department of Motor Vehicles (the DMV) as an example of the best there is in testing. They have two tests. Dumb multiple choice questions that make no sense and a real test that tests to see whether you can drive. Schools typically don't have the real test at all, one that tests to see whether you actually can do something, so the DMV at least is smarter than the school system.

But the real issue is something else entirely. Driving is an instance of a piece of very complex behavior that exemplifies one of the ways in which we learn. Perhaps more important, driving entails a great deal of other things, which could be learned and should be learned.

A simple example of this is car mechanics. Once upon a time schools taught kids to fix cars as well as to drive them. Perhaps they still do. But vocational subjects like that have been relegated to the back burner of education so that more testable subjects can be taught. Also, cars have gotten more difficult to fix. This is too bad, because if car mechanics were required instead of physics, students actually might learn science.

What do I mean by this?

When we hear an outcry about the nation's need to make children learn science, no one ever asks why. The standard answer, if this is ever asked, is that science is important in tomorrow's world or some such nonsense. Push harder and you might get some remarks along the lines that soon all the scientists will be Indian and Chinese, which may be the real fear of those who push science in the United States. To address this question properly, one has to ask what exactly is meant by "science."

Imagine that you are a student working on fixing a car in a car mechanics class. As I write this I am imagining a scene from the musical *Grease*, which was set in the 1950s when there actually were cars to work on in school. I never got to work on a car because I went to a science high school where such a thing would be looked down upon. So when I graduated from high school and drove to college and my car broke down, I hadn't the slightest idea what to do. I wish I could tell you that at least I understood the physics of the engine but I didn't. I just knew F = MA and other stuff that wasn't going to help me fix my engine.

Now let me ask you, how is fixing one's car engine like fixing one's air conditioning or plumbing? The answer to this question has

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embodied within it what it means to do science. When science means learning facts about science, we are talking about useless information that is readily forgotten after the test. I have no idea why anyone learns to balance chemical equations or apply physics formulas or learns about biology classifications in high school. None of this is of any use to most adults. (It is easy to test, however.)

When the stuff that is being taught does not relate to the inherent goals of the students, it will be forgotten. You can count on it. Why this stuff is taught is simply that it derives from a conception of science prevalent in the 1890s that has not been modified since. It is defended by people as a way to produce more scientists, which makes no sense since it probably deters more students from entering science than it encourages.

Scientific reasoning, on the other hand, *is* worth teaching.

Why?

Because car mechanics, plumbers, doctors, and crime investigators, to name four random professions, all do scientific reasoning on a daily basis. As a society we anoint only doctors with the glory of doing actual scientific reasoning. The other professions get less glamorous interpretations. But they are all doing the same stuff. This is what they are doing:

> They are taking a look at evidence and trying to determine the probable causes of the conditions that they have found.

To do this one must know what causes what in the real world, which is science; what counts as evidence of known conditions, which is science; and previous cases that are similar and that any good scientist must know. So while we may not think of a plumber as doing scientific reasoning, that is exactly what he is doing.

Science is about creating hypotheses and gathering evidence to support or refute those hypotheses. Children are natural scientists. They often try stuff out—skipping rocks on the water or dropping stones from the roof or lighting things on fire—to see what happens. But there is more to science than trying stuff out. One must seek explanations and make sure those explanations are correct. Knowing what constitutes a correct explanation is really the essence of what scientific knowledge is about. But notice that there are correct explanations for

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hypotheses in plumbing as well as in medicine and that these explanations exist for repairing a faulty engine and for understanding who committed a crime. It is all scientific reasoning.

The difference between plumbing and medicine is in the complexity of the science. Not a lot of invention goes on in plumbing and there aren't all that many explanations to choose from. The degree of difficulty in understanding what is going on and why is what separates those fields and makes one science and one not. But the basic thought processes are the same.

This is important to notice because all these areas of inquiry are what we might call diagnostic.

So, and this is the important part, the real issue from a cognitive science point of view is not in teaching science per se, but in teaching scientific activities, one of which is *diagnosis*. And, since diagnosis is a similar process no matter what you are diagnosing, it makes sense that all through school, diagnosis would be a subject, and not physics or literature. The things that children are asked to diagnose might start with things little kids like, like finding out what is wrong with their pets or their toys, and then move on to things bigger kids like, like cars and crime, and then move on to large issues, like why a business has failed or why our foreign policy doesn't work.

Diagnosis matters a great deal in our lives, yet it is not a subject in school. This is not surprising because the origins of the school subject areas, as I have said, are scholarly. But if we want to teach children to do things that matter and we want to retain their interest because they know intrinsically that these things do matter, then we must have them practice diagnosis all through their school lives, in a variety of venues that correlate with their interests. They don't all have to diagnose the same stuff. It is the diagnostic process itself that matters, not what is diagnosed.

I have been using the word *subject* for an idea like diagnosis but it is not a subject and should not be seen that way. I have been using the word only to contrast it to existing subjects in school. Diagnosis is a fundamental cognitive activity. Cavemen did diagnosis. They may not have done it well, but they did it well enough to continue the species. The diagnostic process is as old as people. Knowing why, being able to prove a hypothesis, is a fundamental cognitive process.

School needs to be organized around fundamental cognitive activities. It would be easy to demean what I have said here by saying

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I want to teach kids to date and drive better. What kind of school is that?

But this trivializes the point. I do want to teach students to date and drive better. But these are just a few instantiations of general cognitive processes. Forming human relationships and figuring out what is going in the physical world are two of many very important cognitive abilities that manifest themselves in myriad ways in real life.

A properly designed school system needs to focus on cognitive abilities, not scholarly subjects. Kids will recognize instantly that these activities are the ones they know how to do and that they need to get better at. If we allow them to choose what areas of knowledge they would like to focus on while learning these skills, they would be attentive and interested students. No more ADHD. Poof!

A society that organized schools around cognitive abilities would become one where people were used to thinking about what they did and how and why they did it. They would not find school stressful or boring.

This wouldn't be a bad thing.

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CHAPTER 2

Teaching Kids to Walk and Talk

> Failure is instructive. The person who really thinks learns quite as much from his failures as from his successes.
>
> —John Dewey

Teaching is a serious issue. Teachers matter. Or at least they should matter. But we have the sense that it is the job of the teacher to tell us stuff. Students expect it and teachers do it. Often, teachers get criticized if they do anything else. And, this is pretty much the beginning and the end of the problem with teaching. We force teachers to teach wrong.

I am beyond the age where I have little kids that I have to teach how to walk and talk. But when I did, I don't remember preparing any lesson plans. In a cognitive process-based model of education, all teaching looks like the teaching you do when you teach your children to walk and talk.

Lately I have been personally interested in being taught. This is because at the age of 55 I started to play softball in an old guys' softball league in Florida. I discovered I wasn't really very good. This was a bit surprising since I had played in the university softball leagues while I was a professor and had stopped playing only in my 40s. I wasn't a bad player then. There hadn't been that long a hiatus. And, I was playing against people a good deal older than myself since I am rather young as recent Florida transplants go. I used to be a good hitter and I wasn't now. The reason was easy enough to understand. In the university leagues they play fast pitch. A batter has a second or so to decide about swinging. It is all instinct. At least it was after having played for 40 some odd years.

But, in Florida, old guys play slow pitch. The pitcher throws the ball in a high looping arc and it is a strike if it lands on the plate. Quite a different experience from trying to hit a ball that is zinging by your head. Should be easier, no? Not for me. It took a bit of thinking to figure out why.

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I analyzed how I was swinging, when I was swinging, and what kinds of pitches I was swinging at, and I came to many different conclusions. I realized I needed to wait longer before I swung. I realized I had to stop swinging at inside pitches (the ones that almost hit you). I realized that I had to stop swinging at pitches that looked good but yet dropped in front of my feet. I realized I had to see the ball hit the "sweet spot" on the bat. I realized I needed to change my whole approach to hitting, in fact.

OK. I realized a lot. I had come to many conclusions. Now what? Just do it, right? Aha. Not so simple.

You can't just do what you know you should do. Why not? Because your subconscious isn't listening to what you have to say. This is why you don't tell a little kid how to walk and talk. Apart from the fact that he wouldn't understand you anyway, even if he could understand you, the part of his mind that would be doing the understanding is the conscious part. Cognitive process-based teaching teaches nonconscious processes a good deal of the time.

A child learns a lot more from falling down than he ever will learn from hearing Mom say, "Watch your step."

We are wired to learn from failure. Those who don't learn from failure typically die young. We are descended from people who learned not to eat certain poisonous plants, and not to travel in a way that would expose them to danger, and to stay near their mates, and to protect their offspring. Those who didn't do these things, those who didn't learn from their own failures and from the failures of others, didn't get to have surviving offspring. The human race exists precisely because it is capable of learning from failure, both individually and collectively.

Did you ever wonder why what you learned in school isn't still in your head, or why you can't remember what your wife wanted you to get from the store on your way home? Or, why the things you have decided to do to improve your business or make more money or be a better person actually don't ever get executed? The answer is simple: You can't learn by listening—not from teachers, not from your wife, not from helpful suggestions from wise people, and not even from yourself.

Why not? Because it is your subconscious that is in charge of executing daily activities—from swinging a bat, to driving home, to talking to people you want to make an impression on, to getting along with your wife. Your conscious mind can make decisions, but your

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subconscious pretty well does what it is in the habit of doing. The subconscious is a habit-driven processor.

Bad habits, as they say, are hard to break. Actually, all habits, good or bad, are hard to break. A new swing is really hard to develop, as is a new way of selling, or a new way of treating people, or driving a new route home.

This is the real use of education: the creation of new habits. This can be done in only one way. The subconscious learns in only one way.

The subconscious learns by repeated practice.

The only teaching that can work, then, is the kind of mentoring that helps someone execute better while they are practicing.

How is a high school football coach different from a high school history teacher?

Before we attempt to answer this question, we need to consider why it is an important question to consider. In general, I think most people would agree that the behavior of these two types of teachers is likely to be quite different. In our mind's eye, we see images of yelling and crude behavior versus refined lecture and discussion. But let's get beyond the superficial stereotypes and think about what they teach rather than their style of teaching it.

The history teacher at his worst teaches facts, and at his best teaches careful analysis of sources of facts.

The football coach at his worst teaches that someone could never possibly do something, and at his best coaches someone to do something better.

The history teacher teaches the conscious. The football coach teaches the subconscious.

This makes sense if we view education (in school) as a conscious affair. It certainly seems to be a conscious affair. We discuss history, we don't do history. And, it makes sense in football since the coach doesn't need players who can discuss football—he needs players who can execute.

It begins to make less sense when we consider how the conscious and the subconscious interact.

As long as we see ourselves as rational beings who can think logically and make carefully reasoned decisions about our daily lives, then education indeed should be about the promotion of reasoned

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deliberation and the gaining of knowledge that will enhance our ability to reason. But suppose this conception we have of ourselves and our ability to reason logically is simply wrong?

Our entire education system depends on this debate. Actually the word *debate* is really not right here as there is no debate. The other side, the side that says we need to teach our unconscious because our conscious isn't capable of listening, has not really been expressed directly very often. It is, however, indirectly referred to often enough.

Plato comments:

> The most important part of education is right training in the nursery. The soul of the child in his play should be guided to the love of that sort of excellence in which when he grows up to manhood he will have to be perfected.

Why should this be the case? Why should it be in the nursery where real training takes place? And, what kind of training could the nursery provide—the kind of the football coach or the kind of the history teacher? And, what can we learn about education by considering seriously what Plato said?

The principles of learning in childhood are rather simple really. The first and most important part of an analysis of early childhood learning is an understanding of where the motivation comes from. If learning starts with a goal, as we have said, one question is, What goals do children have and how do they happen to have them?

When people mention motivation, the word *reward* often is added into the discussion. What kinds of rewards do children receive and to what extent are these involved in learning? Bear in mind that there are three kinds of rewards: intrinsic, extrinsic, and systemic. If it makes me happy, I don't need you to tell me I did well. If the activity doesn't really matter to me (an algebra test, for example), I will need some outside reward to even try. When do kids learn because of the use of external rewards? If I do well on an algebra test, it might be that it gives me intrinsic happiness to know I did well at algebra. As a math-oriented kid, I did get that kind of reward. It also makes you happy when your parents are proud of you. And it makes you happy when your grades win you admission into Yale or get you something else you might want. Which types of rewards figure into early childhood learning and what can we learn from this about learning? And, what will this tell us about teaching?

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Let's start with walking and talking.

Walking and talking are intrinsically rewarding. No kid needs encouragement to do either. They do have to be discouraged from crying when a word will serve them better. *I want milk* works better than *wah*. But they learn this quite naturally without very much parental help. They learn to walk when their parents hold their hands and cheer when they succeed, but they would have learned to walk anyway.

The parents' role as the teachers of their children can be seen very clearly when we consider walking and talking. Kids can learn to do either without much help, but they do these things quicker and better with parental help. Children who are spoken to by their parents, and listened to and corrected when they make an error, learn to speak well and more clearly as adults. While everyone learns to walk, parental care prevents falls when steps and other hazards present themselves.

So, is the parent teaching the child? What does the parent actually know about how to teach walking and talking? Actually the parent knows quite a bit about teaching. We are wired to teach our children and help them. All higher level animals do this as well. It is not a particularly conscious process.

So, at what point are children better taught by professional teachers instead of their parents? This is an important and interesting question.

A professional teacher is better than a parent if and only if the teacher knows more about what is being taught than the parent does. Teachers may take education courses and that may seem to qualify them to teach, but really those courses are not so much about the art of teaching per se. Teachers learn to teach by teaching, like anyone else learns how to do anything. But teachers learn to teach in the system they find themselves in. This means that typically they learn how to manage classrooms and deal with administrators and handle various issues that are very specific to school.

Teaching outside of school usually does not entail managing multiple children nor should it entail dealing with state standards and other governmental interference (although that often happens anyway).

So, knowledge is the real issue in teaching, not teaching skill. Or so it would seem.

Actually this idea is clearly wrong if one thinks about university teaching. Professors become professors by writing a Ph.D. thesis, not by learning anything about teaching. They may have some teaching experience prior to becoming professors because they may have taught an introductory course or two as graduate students, but nobody

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teaches them how to teach. In fact, professors are not qualified to teach since they know nothing about teaching. They are hired by universities because of their research credentials, and teaching doesn't matter much. There is some lip service about the subject but no one ever got hired at Yale as a professor because she was a great teacher who did no research.

Here is a professor of computer science from a very highly ranked Big Ten university (he does not want his name mentioned):

> Every faculty member in the Department of Computer Science at my university thinks that their small insignificant area is important enough that all undergraduates must take a course in it. When you add all those courses up there is simply no time for a student to do anything other than take crazy courses in subdisciplines represented by the faculty in the department. Everybody's course is a sacred cow. If you tried to put something new in, something would have to come out, and no faculty member wants his course to be eliminated.

Professors are not there because they are good teachers.

I certainly knew nothing about teaching when I became a professor at Stanford many years ago. But I hated seeing students bored and miserable and started to think about what the problem was and how I could fix it. Many professors do exactly this. They want to be good at something they do regularly and their pride makes them into good teachers. Not all professors do this, by any means. What does it mean to become a good teacher in that context?

Professors are rated for their teaching ability. It is clear if one looks at those ratings what the criteria are from the students' perspective. They rate the friendliness, fairness, enthusiasm, and even the "hotness" of their teachers. These ratings have been studied extensively and conclusions like this one are typical:

> While student evaluations of faculty performance are a valid measure of student satisfaction with instruction, they are not by themselves a valid measure of teaching effectiveness. If student evaluations of faculty are included in the evaluation process of faculty members, then they should represent only one of many measures that are used.[1]

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Professors and universities are very concerned about the evaluations of the teaching of the faculty and these days websites (like www.ratemyprofessors.com) make a very public show of how badly received some professors are. The professors are concerned with how they appear and whether they are liked and how all this might affect their salaries. They are not concerned with teaching effectiveness because they are not really teachers in their own minds.

Let's hear from an Ivy League professor (who also doesn't want to be named):

> There are faculty here who study real-world phenomena and don't know how to apply that knowledge to their own lives. We could teach students here how to make use of what we teach in their own lives, we just don't. Right now the approach that is taken makes most of the information that professors impart useless. It doesn't have to be that way.
>
> My colleagues here don't even do what they are studying when they are out of the lab. They are not successful people in life. If someone studying memory had to remember something, would they make use of their own data? I doubt it. Many of our professors don't realize that they may not know as much as they think they know. All these people assume that whatever they do is the best that can be done.

When a child learns to walk, you cannot say you were very good at teaching her to walk. She would have learned to walk without your help, most likely. When you teach a child to play baseball, you can more easily say that you were a good teacher, but really who knows you didn't screw him up with nonsense that it may take him years to undo? I was taught to step into the pitch in baseball and years later learned that what I was taught was wrong.

College professors can be evaluated on effectiveness only if someone knows what that means. Does it mean how well students do on exams? We can make easier exams then. Does it mean how many of them get into Ph.D. programs at Harvard or how many get good jobs upon graduation? That likely has nothing to do with the effectiveness of the professors.

There are no measures that make sense, for a very simple reason. College teaching doesn't make much sense in the first place. Lecturing

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and giving grades is certainly not a paradigm that any parent would use. You don't grade your child on speaking ability; you help her speak better. If it takes longer to do that, then it does. Even the DMV doesn't care about effective teaching. It doesn't give grades, just licenses. *Can you do it well?* is the question the DMV is charged with answering. But *can you do it well?* isn't a meaningful question in the top universities because there is typically nothing, other than research, that anyone is really being taught to do.

This leaves us in a quandary when it comes to understanding what it means to teach well. Here is the Ivy League professor again:

> People need to learn to generalize the information that they are given. They need to learn how to think about content in order to see how that content may or may not be true for them. We do not do that here. Instead we teach that this is the way it is done.
>
> We have kids at mediocre universities who don't know the facts and then we have kids at the good schools who know the facts but very few who know that those facts are not necessarily true. We need a different approach to knowledge than we currently have. By having students memorize the facts, it makes it seem as if the facts are truer than they actually are. We need to teach students to attack the facts and not to replace them with other facts.
>
> If facts are taught here in this way, and we are setting the standard, then we have a problem. Some faculty here actually do teach in this way, but it is not the main culture. Even the hard-core facts, like dates, are arguable. Students are not taught to use the information they have to question other information.

If we are teaching something where there are no performance measures, then effectiveness cannot be gauged. If the performance measurement is based on an exam, this likely would not reflect on the teacher's ability at all. Some students do well on exams and others don't, even though they all hear exactly the same lectures. And, when there are performance measures, it is not always clear that it was the teacher who was in any way responsible for the success of the students (or their failure).

So what is effective teaching?

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If a teacher is better at teaching a child than a parent is, it must be because the teacher knows something the parent doesn't know or, at least, doesn't know how to teach. This makes the teacher more effective than the parent, but for very uninteresting reasons. You can't teach what you don't know, of course.

But knowledge alone is meaningless because teaching is not about the transfer of knowledge. I realize that a great many people think that this *is* what teaching is about; except if that were the issue, students wouldn't even think about rating their teachers on anything except how much they knew. And, by the way, that is about the last thing teachers are ever rated on.

For the most part, teachers are rated by students on how entertaining they are. But entertainment and teaching are really not particularly related. They are not unrelated because you can't get through to someone who has tuned you out. But you can entertain your students and get great ratings and still teach them nothing.

Here is the Big Ten professor again:

> At a big state university, which one would think has an obligation to supply training to the students of that state in a major field in which students can readily find employment, the faculty could care less about that and they only want to do graduate teaching. We teach courses that are modeled after courses in the professor training schools like Harvard and MIT. But how many professors do we need?
>
> Superstars who bring a lot of funding are very important in the university. The superstar system made sense when there were superstars. But today how many of these superstars have really big ideas? Does my school really have any superstars at all? I don't think so.
>
> The School of Education, where I am also on the faculty, has a research focus, which they do badly. Most of their students plan to be teachers. But they teach them the literature and not how to teach. It is the same situation as in computer science. They really want their students to become professors of education. They are not teaching teachers to teach because they don't care about that. They look down their noses at teacher preparation schools. Ninety-eight percent of their undergraduates

> want to become teachers but the faculty are focusing on their graduate students. They don't teach the teachers. They do it, but it is not their focus.
>
> The average professor of education here understands that he is supposed to teach teachers to teach but he gets evaluated on his research not on the quality of teachers who come out. It is a research university. How many dollars do you bring in? How much do you publish? Where would quality of teacher training fit in that model?

So, again, what exactly is effective teaching? Let's look at two of the longer versions of what my former Ph.D. students and former employees wrote to me when I asked about good teaching. These stories each need some context in order to be understood, and then I will comment.

The first story is from a Ph.D. student of mine who then continued to work with me for 30 more years.

> You were collecting key things teachers needed to know to do story curricula properly. Your contribution was "know when to lie to students." That triggered all kinds of discussion, pro and con, leading eventually to a longer, more explicit statement about knowing when to oversimplify, etc.
>
> Reflecting on it later, I realized that "know when to lie to students" was the right way to say it. The rephrased version was too reasonable. It didn't trigger any emotional reaction and re-evaluation. "Know when to lie" is a lie, but that's the point.

Why is this story important? I placed it here because it reflects an important belief that I hold about teaching. At the moment to which he is referring, we were writing, as a group, a set of guidelines on how to teach Socratically using the online curricula we were building for high schools. We were, in essence, writing an instruction manual for teachers on how to teach in a new way. When I supervise very smart people who know perfectly well how to do things, I deliberately provoke them. I believe that my job is to make them think. There is no better way to make people think than by annoying them in a way that makes them defend their point of view, especially when their point of view may not have been well thought out.

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It is important, when teaching Socratically, which is my preferred methodology, to make students question their beliefs. No one is a better teacher than a teacher who makes students wonder whether he has been wrong about something.

Do I think that teachers should lie to students?

I think teachers should make students think harder than they might have been capable of doing without the teachers. I also think that teachers should not tell answers to students. Students do not learn from memorizing answers. They learn from developing questions for themselves that they then can begin to find answers to.

I believe that effective teaching makes . . .

students develop questions to which they then will seek answers
students look for answers from people other than the teacher
students confused and less certain than they were before

Now, I realize that these are pretty nonstandard ideas. That is, of course, the point.

This next writer worked for me (after getting his Ph.D. elsewhere) in the academic world and later in the business world.

> Probably the most important lesson I learned from you was the value of overstatement and oversimplification in communicating ideas and getting people's attention. I recently retired and was roasted at my retirement party by a group of longtime employees and there were some interesting anecdotes about what I'd taught them about selling their ideas through management. Software engineers are often uncomfortable making a point without giving every possible nuance, caveat, and detail. This typically causes management's eyes to gloss over and their ideas never get a fair hearing. So, I've (apparently relentlessly) encouraged employees to make their points quickly and to use overstatement and oversimplification as rhetorical devices. I'm still wincing over the roasts that portrayed my predilection for interrupting presenters and asking, "What's your point?"—I learned that one from you.

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I most certainly taught the lessons this writer describes. I hated it when students couldn't get to the point and I frequently interrupted them when they were speaking. In business, I make a point of saying things that are very simple, which tends to upset people. I find this a good way to start a conversation that addresses complex issues.

Of course, I never actually say any of this. I simply do it. The real issue in teaching, by parents or by teachers or by anyone else, is the model you present to the students. That model is presented by what they see you do and how they see you act. They can choose to emulate you or not. But a good teacher makes students think about how to behave and about what works and what doesn't.

I believe that effective teaching makes . . .

students think about how the teacher is behaving and causes the students to wonder about whether copying this behavior would be a good idea

students think about what works and what doesn't in the adult world

This next writer is a professor at a major university. I hired him to be on the faculty at Yale, which was his first academic job.

> I teach by telling stories that are meaningful to me. I let them see who I am and how I live. I let them see what is important to me and why. To be a real teacher you have to let yourself be vulnerable. The student needs to see that you are a human with feelings and fears and goals. You are saying to students: This is the way I do it; it fits with who I am; it helps me be successful; and don't let anyone tell you that you can't do something. Everyone wants to control you, but in the end, you have to be you, for better or worse. So, don't let anyone tell you that you can't do something.
>
> I tell that story over and over and over again in different ways. About my research, about my company, about my family. I walk the talk.
>
> And, the students have to see that there are consequences of breaking the rules; that it costs; and the costs can be high

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> at times. But that's part of the price of believing in yourself. Sometimes you get hurt and then you have to pick yourself up and try it again.

This writer was writing about his teaching. I behave this way as well, and he knows it.

> I believe that effective teaching makes . . .
>
> students think about the stories the teacher tells
> students believe that their teacher is not a phony, so they can take what is said seriously
> students think about what it means to put oneself on the line for one's own beliefs

The next writer worked for me as a writer for many years. Her main career was, and is, as a concert musician.

> My high school English teacher was a great teacher. He was married to the Singer sewing machine heiress but committed to teaching kids. He had us keep a writing journal and was just excellent at helping me understand what was so personal to me that others wouldn't be able to connect (or perhaps just plain sappy romantic drivel!) and what was "strong" and pertinent to everyone. I still have the journal and wince at what I wrote but still really admire his comments in the margins.

In the future, in a world where online learning begins to preempt classroom teaching, mentoring will replace lecturing. Many teachers know how to mentor but often they are not given the opportunity or don't take the time to do it. The teacher described above was a personal writing mentor, which is about the only way you can teach someone to write.

> I believe that effective teaching makes . . .
>
> students look more carefully at the work that they themselves have produced
> students believe that their teacher is their personal mentor

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Here is the same woman, this time writing about how she learned music.

> My mentor, Otto-Werner Mueller, was conducting the Yale Philharmonia in the 1970s—I met him as an undergrad in Madison, WI. I attended his graduate seminars in Madison and spent a lot of time with him while he was in New Haven. He guest-conducted the Hartford Symphony (where I now work) twice in the past few years. (He is 83 now.) I spent hours and hours in "lab orchestra" watching him teach his conducting students, both in Madison and at Yale. What always struck me was how students were either so self-conscious they were wooden, or how they'd try to imitate Otto (who at 6 feet, 7 inches had amazing stature) physically and couldn't pull it off. Very few were able to incorporate what he was teaching and then make it their own.

I believe that effective teaching makes . . .

students look at what the teacher does and see how they can imitate it in a way that is consonant with who they are

The next writer was a Ph.D. student of mine and is now a professor at a major university.

> Trust your intuitions. This was something you told many of us over and over. It has had three meanings for me—first, that the only right things to work on are those that I can imagine a solution to; second, that whether a way of attacking something is the right way or not, it will lead me to the right way; and third, go out on a limb. I can't say how I learned this except, perhaps, through trusting your advice and then noticing that it got me to success over and over again. It began to really sink in when I had my own students. Often, the most interesting things they brought to me were more intuitive than they were based on what everyone else was saying. And I have had to reassure people that their ideas are good and they should follow up on them. Of course, there are also intuitions that my students have that I don't think are good, and I don't advise them to follow

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> up on those. So I think I now believe in trusting intuitions that someone I trust can also see value in, and for my students, trust intuitions that someone they trust can also see value in.
>
> I believe that effective teaching makes . . .
>
> students trust their own intuitions
> students trust their teacher's advice

The final two are a little different from the others. I included them because teaching is not always implicit, as the above stories indicate, but sometimes explicit. The next writer was student of mine who is now high up in a large corporation.

> You taught me that you always start by collecting data—so basic, but so often overlooked. I recall watching most of your papers start by collection of data. I recall watching your criticisms of work that was just abstraction on abstraction, with no data at its roots. For the work I'm currently doing, I have a log of all the types of entities (typically business or government enterprises), interactions (typically business models or sustainability models), and outcomes. I just gave five talks last week and used the method of "start by collecting data" when introducing my work and when being a critical thinker about the work of others that was being presented to me.

This point is about how to do real research does not apply to everyone. But a more general form of this advice is to start at the beginning, which is usually useful advice. Knowing where the beginning is can be complicated, however.

> I believe that effective teaching makes . . .
>
> students understand how to begin a process
> students understand what you tell if you constantly demonstrate the value of what you tell them

This writer was another of my Ph.D. students who is now a professor at a major university.

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You taught me about the important role of explicit social hierarchies in a learning environment. At Yale the hierarchy was very clear and everyone knew exactly where they stood. You pay your dues before you join the club and academia is chock full of clubs. You taught this by both example and explanation. Seeing a good clear example of a social hierarchy that works (such as the one we had in our lab at Yale) gave me one level of understanding, but I had to see what happens when the hierarchy is not so obvious to truly appreciate the importance of the whole concept. Any longstanding community will have a social hierarchy, but it's not always so obvious (especially when the community likes to pretend it doesn't exist), and that makes it really hard on newcomers. I've seen some really stellar junior faculty get into difficult tenure decisions because no one was guiding them politically (or else they just blew it off). And more recently I've been running into more and more students with "entitlement issues" who just don't seem to buy into any social hierarchies. There is a lot of social commentary on why this is happening and how the workplace needs to adjust to a whole generation of kids who always got trophies.

I believe that effective teaching makes . . .

students understand where they fit in the world in which they live
students understand how to get ahead in the world in which they live
students understand the roles of those around them

There is certainly a great deal more that one could say about effective teaching. Unfortunately, much has been written on effective teaching that is not particularly helpful. Mostly it is politically correct advice that is quite difficult to implement. Here are two lists that I found. The first is from Learning to Teach in Higher Education. 1

1: Interest and explanation
2: Concern and respect for students and student learning
3: Appropriate assessment and feedback

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4: Clear goals and intellectual challenge
5: Independence, control, and active engagement
6: Learning from students

The second is from a Michigan State website and was taken from a book by Arthur W. Chickering and Zelda F. Gamson entitled *Seven Principles for Good Practice in Undergraduate Education.*[2]

Principle 1: Good practice encourages student–faculty contact
Principle 2: Good practice encourages cooperation among students
Principle 3: Good practice encourages active learning
Principle 4: Good practice gives prompt feedback
Principle 5: Good practice emphasizes time on task
Principle 6: Good practice communicates high expectations
Principle 7: Good practice respects diverse talents and ways of learning[3]

Whenever I see phrases like *diverse talents* or *ways of learning* or *active learning* or *active engagement* I am very distrustful of the advice being offered. *Active learning* should mean learning by doing, but it never does because learning by doing is very difficult to implement in the university context (which is where this advice comes from). It is easier to do it in 1st grade, but after a while the class has to sit still and listen and that is not active learning no matter what the teaching guides say. *Different learning styles* is usually a way of saying, "some people are dumber than others," which no one wants to say. What bothers me most about these kinds of lists is that they avoid saying what really needs to be said. It is nearly impossible to measure your success as an effective teacher because the performance expectations of students are almost always about test scores and very rarely about actual production.

With this idea in mind, that effective teaching means helping students do what it is they wanted to do and not what it is that you wanted them to do, I will list the suggestions I have been scattering about in this chapter. Bear in mind that this is not meant to be a complete list. I got this list the way you saw, by interpreting things written by students and former employees about their own experiences.

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Effective teaching makes . . .

students develop questions to which they then will seek answers
students look for answers from people other than the teacher
students confused and less certain than they were before
students think about how the teacher is behaving and causes the students to wonder about whether copying this behavior would be a good idea
students think about what works and what doesn't in the adult world
students think about the stories the teacher tells
students believe that their teacher is not a phony, so they can take what is said seriously
students think about what it means to put oneself on the line for one's own beliefs
students look more carefully at the work that they themselves have produced
students believe that their teacher is their personal mentor
students look at what the teacher does and see how they can imitate it in a way that is consonant with who they are
students trust their own intuitions
students trust their teacher's advice
students understand how to begin a process
students understand what you tell if you constantly demonstrate the value of what you tell them
students understand where they fit in the world in which they live
students understand how to get ahead in the world in which they live
students understand the roles of those around them

Now, taking my own advice about starting with the data and then classifying it, let's look at these rules as a group. What exactly are they suggestions about? Broadly speaking, they fall into the following categories:

Helping students think:

students develop questions to which they then will seek answers
students look for answers from people other than the teacher

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students are confused and less certain than they were before
students think about the stories the teacher tells

Helping students observe and copy good behavior:

students think about how the teacher is behaving and wonder about whether copying this behavior would be a good idea
students think about what works and what doesn't in the adult world
students look at what the teacher does and see how they can imitate it in a way that is consonant with who they are

Making students respect their advisors:

students believe that their teacher is not a phony, so they can take what is said seriously
students believe that their teacher is their personal mentor
students trust their teacher's advice
students understand what you tell if you constantly demonstrate the value of what you tell them

Teaching students how and when to take action:

students think about what it means to put oneself on the line for one's own beliefs
students understand how to begin a process

Teaching students to be good critics of their own work:

students look more carefully at the work that they themselves have produced
students trust their own intuitions

Teaching students their place in the world and how to succeed in that world:

students understand where they fit in the world in which they live
students understand how to get ahead in the world in which they live
students understand the roles of those around them

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Effective teaching, then, means teaching these things:

How to be a critic
Whom to respect and copy
How to know where you fit
How to take action
How to think

The relevant question for a teacher, then, is: Does your teaching result in students who can do the five things listed above? There are many ways to get those things to happen for students. These, however, typically do not include lecturing, being entertaining, giving easy grades or easy tests, or marching students through boring exercises that teach them the truth.

Effective teaching is made much easier, of course, if what you are trying to teach is something worth learning. So, let's move on to discussing that.

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CHAPTER 3

What Can't You Teach?

> Nothing in education is so astonishing as the amount of ignorance it accumulates in the form of inert facts.
>
> —Henry B. Adams

When children are born, they come with distinct personalities. Ask any mother of a second child. "It even behaved differently in the womb," she will say. One kid is aggressive while the other is contemplative. One kid is constantly talking while the other hardly says a word. One kid is shy while the other is outgoing.

Often, when we think about teaching and learning, we have the idea that if we want someone to do something, or know something, or behave in a certain way, all we have to do is teach it to them. So we teach kids to appreciate music, when they may have no interest in, or inclinations toward, music at all, or to act in the class play, when they are simply bad at acting, or to throw a baseball when they simply can't do it and don't care. Often, but not always, we are forgiving of the differences between people and their individual talents and we acknowledge that she is tone deaf, or he will always throw poorly, and we give up.

Small children are like sponges. They ask questions constantly and, if they have reasonable parents, get answers. The belief system that children adopt is usually quite similar to that of their parents. They don't decide to try out a different religion at age 5; they do what they have always known. They eat what they were fed and they like to go to places they have been taken. Parents influence every aspect of a child's belief system. Because of that, we have the sense that we can teach children anything, but this gets less true as they get older. The Jesuits have a saying about teaching a child before he is 7 and thus producing the man he will become. There is some truth to this. If you really learn honesty when you are 5, it is unlikely you will become a crook. Your subconscious wouldn't permit it.

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Then, what is the role of the subconscious here? When a child is being taught at 3, he is not being taught consciously. He does not memorize rules for walking or talking and he does not learn anything very much by consciously trying to learn. Rather, a child absorbs by constantly practicing and then making that practice a part of who she is.

Later, when the subconscious attitudes about walking, talking, relating to others, family values, and all the rest, are well within the deep subconscious of the child, we begin the attempt to teach the child consciously. We worry when we hear, for example, that:

> About a quarter of teens questioned in the broad survey weren't able to correctly identify Adolph Hitler as Germany's chancellor during World War II. About 20 percent couldn't say whom America fought in that war.[1]

More than a quarter wrongly believed Columbus sailed to the New World after 1750. Half didn't know whom Senator Joseph McCarthy investigated. And a third had no clue the Bill of Rights is the source of freedoms of religion and speech. Nearly a third couldn't tell you who said in a famous speech: "Ask not what your country can do for you . . . ."

Until a child enters school, he has been learning things that are useful to him. He knows where his toys are and how to play with them; he knows how to get food; he knows how to get his parents to do what he wants (perhaps); he knows how to entertain himself. In short, he has learned what he has learned because he has found his new abilities to be of value.

And the history cited above? Of what value is it to know about Joe McCarthy? Not only is it of no value to a child, but what we know about McCarthy is slanted by whoever is writing the history and biased by whatever point the person is trying to make. It is all very well to tell students the truth about what happened in the past and assume that they will learn from it, and therefore not repeat it, but we can't easily know the truth and they are not likely to learn much from the telling anyhow.

Pundits scream and yell about what children don't know. The question is: Why do they need to know it? If the answer is that it makes the system happy that they know certain facts while not making the child in any way happier, we all can guess how well that is going to turn out.

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The bottom line here is one of initial belief systems and fundamental personality characteristics, coupled with the notion of truly held goals. You cannot teach someone something that:

- does not help them achieve some goal they actually hold
- is not in line with their fundamental personality characteristics
- goes against their subconscious beliefs

You can try, but you won't succeed.

So the question of what you can't teach, which is very important when we think about teaching and learning, comes down to a question of whom the child has become because of what she learned prior to the age of 7, and what she was anyway when she exited the womb. Those two things are powerful enough even if you don't add in trying to teach something that in no way relates to any goal the child has.

This is even more true for adults, of course. We can try to teach adults things that are at odds with who they are as people, but good luck with that.

Traits may come with the child, or they may have been learned by the child prior to the age of 7, but it really makes no difference when we are discussing teaching. Personality cannot be changed. Core beliefs are very hard to change. Interests are hard to change, although new ones can be found. Clinical psychologists try to make small changes in these aspects of people but they have a very difficult time doing it.

But my point here is to address an issue in education and training that is not well understood. Simply stated it is this: *It is not possible to teach or train students to do things that are not in line with who they are as people.* This matters because much of what we try to teach in school and train for in companies is an attempt to alter behavior.

I have been building what have come to be called e-learning systems for about 25 years. Over the years, I have realized that there is nothing new under the sun in the subject matter that e-learning systems are asked to address. One of my least favorite subjects, one that comes up frequently, is integrity and compliance. I have been asked to work on this subject quite often. Usually what is being asked is impossible. Most e-learning companies simply do what they are asked to do by the client without pointing out—if they even know—that what they are being asked to teach can't be taught. Companies that need

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to train their employees in such things, because of some regulation or other, ask for it, and e-learning companies willingly build it.

Unfortunately, as my mother would have attested to, were she still around, I was born with off-the-scale honesty. I can't build e-learning I know won't work any more than I was able, when I was 5, to let my mother walk out of a store without paying (by mistake) without becoming hysterical.

So, now I am hysterical about fraudulent education and fraudulent e-learning—namely, courses that claim to teach subjects that alter the very nature of a person. Of course, such courses don't say that is what they are trying to do, but it is pretty much the basis of courses about safe driving or drugs or sexual behavior, or how not to violate the law.

How is training about compliance an attempt to alter basic behavior?

Recently I was presented with an opportunity to teach integrity and compliance to the employees of a large company that bids on RFPs. The bidding process is part of a legal process and the company wants its employees to stay within the guidelines.

Fair enough. Makes sense.

Except, when you look at the guidelines, they include an array of rules spelled out in a complex document, typically a signed legal contract for potential bidders. To know those rules, one would have to read the contract. In effect, the company wants to train people to read, and pay careful attention to, the contract. The company wants to do this by putting employees in fictitious situations in which someone has not read the contract and this failure to read causes serious difficulties for the company when the employee violates a rule he didn't know about.

Much of e-learning is like this. You are the manager of a large project, which needs to finish on time, and is over budget. Do you:

- steal money
- lie about the time you have spent
- tell the company it can keep the damn project
- carefully explain to your superiors the problems that exist and let them decide

Do people learn from stuff like this? Of course not. But everyone feels better after producing it. At least I assume they do.

If this stuff makes people happy, then build more of it, by all means. But if we want to address real issues, we need to discuss personality and how to deal with it.

I have insisted, as long as I have been discussing education,[2] that learning has to be experientially based. I proposed building complex social simulators 20 years ago, and this has come to be understood by the e-learning community as telling people they are in a situation that they may or may not relate to instead of actually putting them into a very realistic simulation of that situation. The reason they do it that way is money, of course, but something gets lost in the translation.

What is the difference?

Suppose that I tell you that you are a baseball player in the major leagues and your team is down by one run with one out in the bottom of the ninth with the bases loaded. I then give you a set of multiple choices about what to do on the first pitch (like, a—take the first pitch, b—look for a fast ball, etc.). What is the problem with this? There are right answers about what to do, but they depend on many variables (Do you know this pitcher's habits? How have you been hitting today? How fast is the guy on third?). Pretending that we can abstract a situation with a simple description and then suggest there is a right answer, is absurd. But more important, if you have never actually been in that situation, if you have never played baseball, your comprehension of the unmentioned details is likely to be zero. Attempting to teach anything through short descriptions of situations followed by multiple choice answers is just dumb.

Why, then, do e-learning companies keep on building courses that sound like that? Usually the answer is that corporations that don't know any better asked them to.

What does this have to do with altering basic behavior? I do indeed play baseball, as I have said, and what I would do in that situation depends on my personality in many ways. It also depends on an accurate assessment of my own abilities. What it doesn't depend on is deep thought. Professional athletes do not become professional athletes owing to their superior cognitive abilities. They have superior physical abilities and rely on instinct for thinking. They do what they "know" to do. They don't think it out. Coaches try like crazy to get them to think it out, but you often can find a 20-year professional veteran getting chewed out by his coach and being asked, What were you

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thinking? Nothing. He was thinking nothing. Correct action is rarely about thought, especially when little time for thinking is available.

So, then, how do we teach people to do the right thing, especially when the right thing is not in line with their normal behavior?

Can we teach nurturance, or aggression, or extroversion, or orderliness? I hope that it is obvious that we cannot do this. People are born with these characteristics. They are not learned. Ask any parents of more than one child. They will respond that their children had certain personality traits that were apparent from birth. My grandson Milo is a neatnik. Everything has to be in its place. Also, he loves to perform in front of an audience. His parents do not share and did not teach him these behaviors. The degree to which we have such traits defines our innate personalities. So, we need to translate this question into one we can answer.

The real issue is one of degree and not of kind. You will never teach someone who is fundamentally dishonest to be very honest, or vice versa. You will never teach someone who is very aggressive to be very passive. What you can do is make people aware of the consequences of their actions and hope to change their behavior slightly, when they have the time to think about what they are about to do. You can make people aware of their behavior, and their rational selves can direct what they do, if they have time to think about. But their subconscious is likely to want them to behave differently, and it is their subconscious that is usually in charge in a pinch.

Someone who hates details is not a good candidate for being taught to read contracts in detail. Similarly, someone who loves details is not a great candidate for sales rep. (Why? Because being very people-oriented is actually a characteristic that never goes hand in hand with being detail-oriented.) So, it is not uncommon for companies to be faced with the arduous task of training their salespeople to pay attention to detail. Telling them to hire differently is hopeless, because people who are both very detail-oriented and love engaging people socially do not exist. Accountants don't usually win personality contests. What to do?

This is indeed a job for teaching but not for teaching of the usual sort. To see what kind of job it is, we need to think for a moment about how the mind works. Specifically, we need to think about how the unconscious learns to make decisions.

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If you have a character trait, say, honesty, you have had to come to grips over the years with its upside and its downside. People appreciate you for being honest, but not when they ask you if they look good after they have spent an hour dressing (I speak from experience here). People dislike dishonesty but not when it helps get a deal closed because you said you loved a restaurant that you really hated. We have mixed feelings about honesty, as we do about any personality characteristic. We like friendly people but we dislike overly friendly people. Who decides which is which is anybody's guess. Teenagers often try to be all things to all people, but as adults they soon realize that they simply will have to be themselves and they will try to find work and friends that suit the personalities that they happen to have.

Personality features are not conscious. We don't decide which ones to have and we may not even be aware of how others perceive us. We do what we feel comfortable doing and we push on. And then we meet integrity and compliance officers.

They tell us to read every detail of a contract to make sure we are in compliance, and those who are detail-oriented and fearful of making errors and introverted and sensitive do it without question, and those people who are gregarious and confident and aggressive figure they can get by without it. What is an integrity and compliance officer to do?

Here is what not to do:

- Don't try to tell people who naturally act one way to act differently.
- Don't make a movie of the idiot who did it wrong and say, See, look how dumb that guy was and look what trouble he got into.
- Don't lecture on the benefits of behaving the way the company wants you to behave.
- Don't write a manual with correct behavior that no one will read.
- Don't build an e-learning course with multiple choice answers where one of them is the right thing to do.

The mind is organized around experiences. We remember our experiences and we index our remembered experiences so that we can find them later. Individuals don't know how they do this, but cognitive

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science can tell something about how this process works. You can't find an experience that was indexed wrong, for example.

Good indexing involves figuring out the goal that an experience relates to and the conditions that allowed that goal to be achieved or not. We do not do this consciously. We learn by doing, that is, we learn from experience, and from thinking about those experiences. When we have understood our experiences well enough, we can (unconsciously) index them so that they will come up again just in time when we need them again. (This is what we call being reminded.) It is beyond the scope of this book to explain how that process works.[3] The simple idea is that experiences get labeled when we think about them and not otherwise.

So the real question for an integrity and compliance officer is how to get people to think about integrity and compliance issues. This thinking needs be done over time in a complex way and voluntarily. How might we do that?

That is the real question.

One answer to this is stories. People really like stories. As long as there have been people, there have been stories; we have moved from epic poems and theatre to novels and movies in recent years, but, by and large, the stories are the same. How to overcome obstacles to getting what you want, is a theme that dominates much of literature, for example. Movie makers say it as "boy meets girl, boy gets girl, boy loses girl, boy gets girl." There have been many books written about the basic plots that occur again and again in stories.

Human beings understand stories because stories resonate with them. Characters have dilemmas that readers or viewers themselves have had. Stories appeal to emotions rather than logic, and emotions are at the heart of our pre-7-year-old unconscious selves. We feel something because of a well-told story and that feeling can help us see something in a new way.

Why am I going on and on about stories? I believe that all of human intercourse is about the exchange of stories. (I wrote a book about this.[4]) If you want to appeal to the pre-7-year-old unconscious that resides in all of us, you need to hit emotion not logic. This means that a good story can help someone to reconsider deep down in their unconscious a feeling or attitude or seemingly immutable personality trait that they can feel perhaps is somewhat dysfunctional. Stories can change our natural instincts.

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That story cannot be short and sweet. It takes a great deal of emotion and empathy to change a point of view in a belief system. Deciding to construct a 15-minute, e-learning module in which one plays the sales rep and learns that honesty is the best policy, is so absurd that I am sorry I am referring to it at all, except that is what was proposed by the integrity and compliance people to whom I was speaking.

You can move people ever so slightly by having them have emotional experiences that they can discuss with one another. Imagine a book club that deals with a book about dishonesty and causes people in the discussion group to talk about the subject. If the book presented deep dilemmas to which there were no obviously right answers, this would allow people to get to and discuss their unconscious beliefs. Simply articulating those beliefs can be quite helpful. This is what clinical psychologists are really trying to do, after all. It is also what literature professors are trying to get their classes to do. Thinking about and talking about complex emotional issues makes personality traits and core beliefs something you can think about consciously.

The real issue, in the end, is interests. Teaching works best when you teach students who agree that they really want to learn whatever it is you have to teach. This means making sure that students are preparing to do things that they want to do and actually will do. That makes teaching much easier for all involved. The one-size-fits-all curriculum doesn't work because one size doesn't fit all. Let detail-oriented people learn detailed kinds of things. Let artistic people learn artistic kinds of things. Let logical people learn logical kinds of things. Everyone would be much happier and all would enjoy learning a lot more if we simply let people be themselves.

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CHAPTER 4

Twelve Cognitive Processes That Underlie Learning

Those who know how to think need no teachers.
—Mahatma Gandhi

Not everything we would like to teach can be taught, as we have seen. Similarly, not everything we would like to learn can be learned, especially if we are taking the wrong approach to learning. In the previous chapter we discussed what can't be taught. Now, let's talk about what can be taught.

One problem in such a discussion is that we are used to (because we went to school) thinking about what needs to be taught and learned in terms of subjects (English, math, science, etc.). We think this way because school originally was organized by professors who had specialties in these subject areas. These professors were scholars and they set up the lower schools on the basis of the specialties that they had.

When I was working in artificial intelligence, I began to realize that what I needed to teach the computer to do in order for it be smart was a far cry from what people thought needed to be taught. People assumed that we needed to tell the computer facts about the world of the type that children learn in school, and that this would make the machine smart. (Quite recently, I attended a meeting of AI people who were planning a project to allow computers to pass SAT tests as a way of showing that the computer was smart!)

But what computers lack is intelligent capabilities, not information. It is easy enough to fill a machine with information, but when you are done, it would be able to tell you only what you told it. (If that was what a child did, you would think that he was brain damaged.) Intelligence and the learning required to create useful new knowledge are really a result of an amalgamation of cognitive processes. Intelligent computers, and intelligent people, need those processes to be working well.

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What I mean by this, is that there is stuff we can do mentally, and that learning just means doing that stuff and getting better at it. Learning is not any one process, but many processes, depending on what you are learning.

What are the cognitive processes that make up learning? If we wish to teach people, it is important to ask what cognitive capabilities we want them to have when we are done, not what we want them to know. In other words, we want to understand what we have to do in order to make them better able to think.

In this chapter, we will discuss the kinds of cognitive processes that people can (and must) learn to do well. Later we will discuss how to best approach learning and teaching these processes.

There are 12 types of processes outlined here. There may be more types than these, but with these we pretty much can cover the ground of what human learning looks like. I have divided them into three groups: *conceptual processes*, *analytic processes*, and *social processes*. Notice first that all the types are types of processes. Thinking is a process. It is something we do. We need to see what that doing is like.

All these processes require practice in order to master them. You cannot learn to master a process without practicing it again and again. Feedback and coaching help one learn.

CONCEPTUAL PROCESSES

1. Prediction: Making a prediction about the outcome of actions

This is experiential learning about everyday behavior in its most common form—it includes learning about how to travel or eat or get a date, for example. In its complex form it is how one learns to be a battlefield commander or a horse race handicapper. One learns through experience by trial and error. The cognitive issue is building up a large case base and index that case base according to expectation failures, as I described in *Dynamic Memory*. We learn when predictions fail. When they succeed, we fail to care about them because most of the predictions we make are uninteresting (I predict the room I just left will look the same when I return). Learning to predict what will happen next requires repeated practice in each domain of knowledge. There is some

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transfer across domains but not that much. (Learning to buy an airplane ticket is somewhat related to eating in a restaurant, but not that closely. You might use a credit card in each, for example, and might be refused service because you are rude.)

2. Modeling: Building a conscious model of a process

We need to learn how things work. A citizen knows, presumably, how voting works. Someone looking for venture capital should know how fund raising works. Processes need to be learned in order to effectively participate in them and in order to propose changes in them. Building a conscious model of a process matters a great deal if you want to make the process work for you. If you want to get into college, you need to understand how the process works. This cannot be learned from experience in a serious way because one may do it only once and may not be able to experience the entire process. Having the process explained to you may not work that well either because this will not bring an operational understanding of it (as opposed to a more superficial understanding of it). Designing it, modifying it, and participating in simulations of it work much better as learning methods.

3. Experimentation: Experimentation and replanning based on success and failure

This is probably the most important learning process we engage in while living our lives. We make life decisions and we need to know when we need to change something. There are big decisions—like getting married or how to raise a child or whether to change jobs—and little decisions, such as changing your diet or your sleep habits. We make our decisions on the basis of what has worked before and what has failed to work. We tend to make life decisions without much knowledge. We don't know how our bodies work all that well and we don't really know how the world works or what it has in store for us. Thinking about these issues and learning from failure is a pressing need all through life. Learning to analyze what has worked out and what has not and why is part of living a rational life. These things can be learned by living and talking about our experiences, thus creating a database of stories that we can rely on later. We learn by talking with

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others and hearing their stories but we also learn from our own experience as we construct our own stories. We can learn about life experiences through reading and movies as well. We like stories in all these forms precisely because they focus on real-life issues. The cognitive task here is story creation, comparison, indexing, and modification. Most conversation depends on story exchange. The more emotional a story is, the more likely it is to be remembered.

4. Evaluation: Improving our ability to determine the value of something on many different dimensions

There are no rights and wrongs in what we like. But there is general agreement about what makes a work of art great. The factors to be considered are not necessarily conscious, although for experts they typically are. In these more subjective and subconscious areas of life, it is more a matter of trying to understand what feels right than understanding why it feels right. There is a difference between being someone who can make an artistic judgment and being an art expert. One might learn to notice things that one had failed to notice, if someone takes the time to point them out. Learning to make artistic judgments is about learning to notice, to describe, and to appreciate. One's concept of beauty changes when one's focus changes. Practice is a key idea here as is the assembling of a case base to use as a comparison set. Nevertheless, the comparison set is not usually conscious. One can like something because it is pleasing without realizing (or caring about) why it is pleasing.

When we make a value judgment, we don't necessarily know the values we have and we haven't necessarily learned them consciously. We should value human life over property but whether we do or not we will find out only if the situation arises. It is tempting to try to teach values but this actually is done so early in life and in so many subtle ways that anybody over the age of 10 is unlikely to be much affected by what people say to them about what they should value and what they shouldn't. Perhaps husbands should value helping their wives over watching football but that doesn't mean they will. In important areas of life, on the job and in child raising, for example, one's values come into play. If parents believe they shouldn't correct a child when he makes a mistake in speaking, they soon will find that they have

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a child who speaks poorly. The value held by the parents may well be that self-confidence is more important than being articulate ("We don't want to criticize him."). Perhaps it is. But the consequences of one's values manifest themselves every time a value-based decision is made.

Nevertheless, we do need to learn to make value-based judgments. Doing this requires understanding what our values are. Confronting a person with her own value system (one that she has unconsciously adopted) can help her think things out, but change is never easy.

ANALYTIC PROCESSES

1. Diagnosis: Making a diagnosis of a complex situation by identifying relevant factors and seeking causal explanations

Diagnosis is a very important skill and one that needs to be learned both in principle and separately for each domain of knowledge. Diagnosis of heart disease isn't a different process in principle from diagnosis of a faulty spark plug in a car engine. Nevertheless, one wants a specialist to do the diagnosis in each case. Why is this? Diagnosis is a matter of both reasoning from evidence and understanding what to look for to gather evidence. Given all the evidence, it is easy to make a diagnosis in an area of knowledge you don't know very well. So, the gathering of the evidence is the most important part. Crime analysts and gardeners both do diagnosis. They both reason from evidence. What separates them is knowing what constitutes important evidence and what does not. Here again, this comes from experienced cases.

Analytic processes involve attention to details that enable the forming of hypotheses that can be tested by a variety of methods. These three pieces, determining evidence, forming hypotheses, and testing hypotheses, are what is commonly referred to as the scientific method. When science is taught, it often dwells on the facts of science rather than the process. Diagnosis is about the process. But the process is not of much use without domain knowledge. Domain knowledge is often about causality, although that knowledge of causality may be subconscious. Experts know what causes an engine to misfire so they

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know where to look to find a faulty part. Experts also know that an engine is misfiring in the first place. What causes what is the real issue in the comprehension of any given domain.

We learn to do diagnosis, and to understand what causes what, consciously. This is knowledge that can be taught to us by experts, but it needs to be taught as part of the process of diagnosis. If you have a goal (understanding what is broken or has gone awry is a very typical goal), then it is much easier to acquire information that helps in the pursuit of that goal than it is to acquire that same information without that goal. To learn diagnosis, one must practice more and more complex cases in one area of knowledge.

2. Planning: Learning to plan; needs analysis; conscious and subconscious understanding of what goals are satisfied by what plans; use of conscious case- based planning

People plan constantly. Often their plans aren't very complicated. Let's have lunch is a plan, after all. Sometimes they make much more complex plans. A football coach makes plans to fool the defense. They are called plays. A general makes battlefield plans. A businessperson writes business plans. An architect draws up architectural plans. All these more complex plans have a lot in common with the let's have lunch plan. Namely, they have been used before or something quite similar has been used before. People rarely make plans from scratch. When they do, they find the process very difficult and often make many errors.

Learning to plan, therefore, has two components: being able to create a plan from scratch (which almost never actually happens) and being able to modify an existing plan for new purposes. The first one is important to learn how to do, but it is the latter ability that makes one proficient at planning. Planning from first principles is actually quite difficult. Normally people just modify an old plan. Last week we had steak; this week let's try lamb chops. This doesn't sound like rocket science and it isn't. Computer programmers write new programs by modifying old programs. Lawyers write contacts by modifying old contracts. Doctors plan procedures by thinking about past procedures. In each case, people try to improve on prior plans by remembering where these plans went wrong and then thinking about how to improve them. Acquiring a case base of plans is critical. One can modify plans from one domain of knowledge to use in another but this is not

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easy and requires a level of abstraction that is very important to learn. Most creative thinking depends on this ability to abstract plans from one field of knowledge to another. We learn to do this by practicing it. Teachers can help people see correspondences across domains. Abstraction of this sort is what creative people do best.

3. Causation: Detecting what has caused a sequence of events to occur by relying on a case base of previous knowledge of similar situations (case-based reasoning)

All fields of knowledge study causation; biology, physics, history, economics—they are all about what causes what. The fact that this is an object of study by academics tells us right away that it is not easy and no one knows for sure all of the causes and effects that there are in the world.

Because of this, acquiring a set of known causes and effects tends to make one an expert. A plumber knows what causes sinks to stop up and knows where to look for the culprit. A mechanic knows what causes gas lines to leak and knows where to look. A detective knows what causes people to kill and knows where to start when solving a murder case. Causal knowledge is knowledge fixed to a domain of inquiry. Experts have extensive case bases. Case bases are acquired by starting on easy cases and graduating to more complex ones. It is important to discuss with others the cases one works on because this makes one better at indexing them in one's mind, enabling one to find them later as needed.

4. Judgment: Making an objective judgment

There are two forms of this, both involving decisions based on data. The first is deciding whether you prefer Baskin Robbins or Ben and Jerry's. There is no right answer. We make judgments and then record them for use later. We find ways to express our judgments (Ben and Jerry's is too sweet, for example). We learn what we like by trying things out. A wine expert learns about wine by drinking it and recording what he thinks so he can compare his thoughts about one wine to those about a different wine later on.

The second form is reasoning based on evidence. A jury does this but it doesn't learn much from it. Judges, however, learn in this way, as do psychiatrists and businesspeople. They collect evidence, they

form a judgment, and later they may get to see whether their judgment is correct. When asked, they can tell you clear reasons (typically post hoc justifications) as to why they decided the way they did. The wine expert can say reasons as well, but the evidence for taste is not really all that objective. (Of course, the evidence may be found after the judgment is made. People are not always entirely rational.)

To learn to make objective judgments, one needs constant feedback either from a teacher or from a colleague or from reality. One needs to think about what was decided and why. People who are good at this are good at it because they have analyzed their successes and failures and they can articulate their reasoning. Learning requires repeated practice.

SOCIAL PROCESSES

1. Influence: Understanding how others respond to your requests and recognizing consciously and unconsciously how to improve the process

Human interaction is one of the most important skills of all. We regularly interact with family, friends, colleagues, bosses, romantic interests, professors, service personnel, and strangers. Communicating effectively is very important to any success we might want to have in any area of life. But, we do not know why we say what we say, nor do we really understand how we are being perceived by others. We just talk and listen and go on our way. Some people are loved by everyone and others are despised. It is wrong to assume that we know what image we project or that we are easily capable of altering the way we behave so that we will be perceived differently.

How do we learn to become conscious of inherently unconscious behavior? One can learn to behave differently if one becomes consciously aware of the mistakes one is making. Watching others, watching oneself, thinking about how to improve—all this helps one make subconscious behavior into conscious behavior.

We unintentionally return to standard ways of acting in various situations. A wallflower at a party doesn't decide to be a wallflower—it is simply behavior she is comfortable with. If no one is harmed by

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these subconscious choices, then there is no need to fix anything. But often we might behave differently in how we treat others, if we realized what we were doing. Getting along with people is a very big part of life. Each of us has our own distinct personality and often it doesn't match with our own ambitions and desires. To change our behavior, we need to practice new behaviors that become as natural to us as our old behaviors. The only way to do this is to do it. People can help point out what you are doing that isn't helpful to your needs but that does not mean you can easily change. If you want to change, you need to try new behaviors and practice them. This can be coached. Practicing new behaviors and being critiqued can help greatly. Written communication is handled the same way.

2. Teamwork: Learning how to achieve goals by using a team, consciously allocating roles, managing inputs from others, coordinating actors, and handling conflicts

It is the rare individual who works all alone. Most people need to work with others. Children are not naturally good at this and are taught to "share." Then they sometimes do what is called "parallel play" where they play near one another doing different things. Getting kids to cooperate to do something together is not easy. Usually one wants to dominate the others. There is nothing wrong with this per se. People are who they are and they need to assume roles in any team that are consonant with their personalities. One person plays quarterback and another blocks. People do not have to do the same thing in order to work together. But they do need to get along and function as a team. This is no more true of sports than it is of the workplace. People learn to work in teams by working in teams and receiving helpful advice when a team is dysfunctional. Football coaches explicitly teach this. More formal learning situations (like school) often don't, which is unfortunate. It really isn't possible to get along in the real world unless you can assume various roles in a team that fit with who you are.

3. Negotiation: Making a deal; negotiation/contracts

Contracts, formal and informal, are the basis of how we function. We reach agreements in business, in marriage, in friendship, in a store,

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and at school. Parties to those agreements have the right to complain if obligations are not met. Learning to make a contract, legal or not, is a big part of being a rational actor. To make a contract one must negotiate it. Negotiation often is seen as something only politicians and high-powered business leaders do. But, actually, we negotiate with waitresses for good service and we negotiate with our children when we give them an allowance. Learning how to negotiate can be done only by trying and learning from failures. The techniques tend to be context-independent, but there is, of course, special knowledge about real estate and politics (for example, the relevant laws) that makes one a better negotiator in each situation. Again, practice with coaching is the ideal.

4. Describing: Creating and using conscious descriptions of situations to identify faults to be fixed

When problems exist in any situation, we need to be able to describe and analyze them. We need to be able to describe them in order to get help from people who may know more about the situation than we do. We need to learn to focus on the critical issues. In order to do this, we need also to be able to analyze these situations to see what was supposed to happen and why it isn't happening. Consultants who try to fix failing businesses do this sort of thing all the time, as do doctors when consulting on difficult cases. Creating a careful description of a situation is a skill that can be learned only through practice. This sometimes is described as learning an elevator speech to tell someone succinctly what you are doing. This ability is a very important part of understanding and helping others understand.

Now let's see what we have. First let's list again the types of cognitive processes that underlie learning:

Conceptual processes

1. Prediction
2. Judgment
3. Experimentation
4. Evaluation

Analytic processes

1. Diagnosis
2. Planning
3. Causation
4. Judgment

Social processes

1. Influence
2. Teamwork
3. Negotiation
4. Describing

What kind of stuff is this? I said above that these are cognitive processes. So let's look at them from that perspective. Let's start with the analytic processes.

What does it mean to say that diagnosis is a cognitive process? It means that there are steps and these steps are based in thought rather than in action. The first step may be to gather evidence, for example. While this seems like a physical act, and often it is, it is actually a mental act. Evidence can be gathered by asking questions, by looking carefully at a scene, by listening to sounds, or by taking blood tests. There are many ways to gather evidence and typically the physical manifestations of evidence gathering bear no real relationship to one another. Evidence gathering is a mental act, although physical actions may be involved. It is a mental act that is part of a set of complex mental processes that, of course, include reasoning about the evidence, checking the validity of the evidence, comparing known information with previous cases that are similar, and so on. Diagnosis is a complex mental process. Teaching diagnosis matters because getting good at diagnosis can make you a good mother, a good teacher, a good detective, a good nearly anything you can think of. The process of diagnosis is constant in our mental lives.

Are all 12 of the processes listed above like this? Clearly the other analytic processes are very similar. Planning is a mental activity that one gets better at by doing it. Whether you are planning a party or planning a career, the process involves thinking about steps and

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imagining consequences to those steps. The more you plan, the better you get at it. We do planning every day. It matters a great deal and the better you are at it, the easier your life will go. The same is true of the third mental process: analysis of causation. Knowing why something happened allows us to not do it again—if we didn't like the end result—or to try to do it again, if we did, and everything in between. Determining causation is a mental process that is very similar to diagnosis, of course.

So these three are all cognitive processes and they require constant practice. Getting better at them throughout one's life is very important. I define learning as improvement in one's cognitive processes. Lifetime learning does not mean the continual acquisition of knowledge so much as it means the improvement in one's ability to do these processes by means of the acquisition and analysis of experiences to draw on.

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CHAPTER 5

Real-Life Learning Projects Considered

> I learned more about the economy from one South Dakota dust storm than I did in all my years of college.
>
> —Hubert H. Humphrey

These days everyone has ideas about ways to improve student learning. These range from having kids stretch between classes, to listening to Mozart, to eating right. Of course, those things won't harm you, but they really have nothing to do with learning. They are about getting students to concentrate on material that doesn't interest them much. Presumably, a tedious task is made better by these kinds of things. An interesting task does not need that kind of enhancement. It should be interesting in and of itself.

In the summer of 2008, I met a most unusual man. He recently had retired from being the CEO of Epson Europe. Some years earlier, his close friend, who was director general of a college, got sick and died. His dying wish was that his friend, the Epson CEO, would succeed him and become president of the business school of the college. And so it happened that a professional from the business world found himself in charge of the Business Engineering School at La Salle University in Barcelona, Spain. During his years at Epson he had hired many graduates from that college and others, and believed that the training they received there was highly theoretical, not practical enough or oriented to the real world of business. It was clear to him that students needed a different kind of training in order to prepare them for professional life. He began to talk to the faculty about teaching different kinds of courses, ones that were less theoretical and more related to what people actually do in business. The faculty objected. Shocker.

A provost friend of mine once said that with faculty, everything is a la carte. What he meant was that professors never feel that they have

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to follow the wishes of the administration. They consider themselves free agents. This former CEO, coming from a business where there really is someone in charge, didn't know what to do. He talked to people who talked to people and eventually he found me.

As a professor for 30 some odd years, I developed a healthy disrespect for professors as a group. They tend to lobby for keeping their lives easy and that means, among other things, making sure they don't have to teach too much or teach in a way that makes them have to work too hard. Professors always have something more important to do than teach. I am not criticizing here. I would have been the first to whine and wail if anyone had made me teach more than one course every other quarter. I considered myself a researcher, also a graduate seminar teacher, but classes with lots of students wanting to hear a lecture? Ugh.

The college president and I had dinner and discussed what we could do together. I said we could build any program he wanted online as long as we didn't need the approval of faculty to do it and we had good experts available. He said he was the expert and we needed the approval of no one. I said it would be expensive and he said, *God will provide.* (Did I mention this school is run by the Christian Brothers?)

Two months later I found myself in front of 25 faculty in Barcelona as I interviewed the president about what someone would have to know how to do in order to make them into someone whom he would hire. He gave me a list. The faculty got to comment, but that was about it. It was clear who was in charge.

So, we built a story-centered curriculum meant to teach practical business by creating simulated experiences. The idea is to deliver it online around the world, using mentors who speak the students' language. (The website is in English). No classes. No lectures. No tests. Graduates get an MBA degree but this curriculum doesn't have that much in common with traditional MBA programs. The idea is to help people launch their own business or go to work.

Students are part of teams that work to create deliverables within a story about a situation that demands some work on their part. They consult with their team members and use extensive background and step-by-step help that has been created as part of the website. Mentors are available to answer questions and to evaluate the final work product. The projects are large enough that students need to divide up the work and consult with one another on how to proceed. Eventually

they create a deliverable and either continue to work on improving it after receiving feedback from the mentor or move on to the next subtask in the story.

I will describe briefly the stories that the students work within (they each last anywhere from 6 to 9 weeks). Then I want to consider what these courses are really teaching from the perspective of the framework of cognitive processes that I described in Chapter 4.

COURSE 1: "CASH CRISIS"— ANALYZE AND SOLVE FINANCIAL BUSINESS PROBLEMS

The story for this course is that a family that owns a winery business hires a consulting firm to help determine why the bank denied the renewal of a loan. The students, working in the role of assistant consultants, first conduct financial analyses to determine problems within the business. Next, they conduct a root cause analysis to determine the underlying causes of the problems affecting the business. Students then develop solutions to address the problems and write a report outlining the solutions, including 5-year financial projections.

COURSE 2: "GOING ONLINE"— TAKE A SMALL BUSINESS ONLINE

Students are contacted by an investor who is interested in starting an online business selling gift baskets. She wants the students to help her plan what the business will sell in the gift baskets and to design the user interface for the website. She is leaving it up to the students to determine what sort of gift basket business they want to design. Her immediate concern is seeing what the site would look like, and how it would function, to make sure she will have a good design to impress prospective buyers.

Students begin by interviewing prospective customers and seeing how they typically buy such items online, to learn from their usage patterns and to determine common breakdowns in the usual process. Next, students produce expected user scenarios for the "personas" they identify as being prospective users of the site. They then define functional and nonfunctional requirements for the site they must

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design. They design the information architecture, including content, sitemap, wireframes, and low-fi prototypes, after which they test their prototypes on prospective users. The final step in the process is a review of proposals from a set of vendors who could build the site the students designed.

COURSE 3: MARKETING—LAUNCHING A NEW PRODUCT

In this story, the students belong to a product-launching team. The goal is to launch a new social network for amateur performers, iSing.com. Students decide which role they want to play, product marketing or marketing communication, and working together in teams of four, they prepare the launching plan for this product. Among the activities they perform are preparing job descriptions for both roles, preparing a position strategy statement and a message architecture, preparing a preliminary market segmentation for the product, preparing demographics and psychographics of the target groups, launching a kick-off meeting for the project, and preparing a launching program, including the following subtasks: total product requirements, barriers to customer adoption, competitive analysis, market/customer research, hiring a research firm, market leverage model, communication plan, web tools, branding, market research, and hiring a PR firm. Finally, students prepare a complete budget and defend the plan and the budget in front of the top management of the company.

COURSE 4: RE-ENGINEER A SUPPLY CHAIN

Students now play the role of junior executive in the supply chain management department of RightByte technologies. They receive a report from the CEO describing the current processes and the main problems identified. With this information, students are requested to find out the root causes of the problems and come up with a suggested course of action to solve them. They have to take into account the following design principles for the new solution: customer service impact, impact on cost savings, and ease of implementation.

From this point on, the teams analyze each piece of the supply chain to make the deep diagnosis: demand/supply planning,

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transportation, warehouse management, sales order management, and central order fulfillment. Once the diagnosis and requirements are well established, the teams develop a suggested solution. Finally, top management requires the team to prepare a change management evaluation to see whether the company is prepared to undertake such a complex project.

COURSE 5: INVESTMENT READINESS—HELP A SMALL TECHNOLOGICAL COMPANY TO SUCCESSFULLY RAISE FUNDS FOR AN INTERNATIONAL EXPANSION IN A SECOND ROUND

Next.TV is a small company that has been very successful in the local market. It has developed a software package to automate an editorial department of a TV channel. Most of the main domestic channels have already implemented the package and the company wants to go international. Students are hired as expert consultants to prepare the company for this second round of financing and to present the project to Venture Capital firms. Students now do several tasks that they have already done in the previous modules, plus some new tasks, but they do them now in an integrated manner and with much less time to finish them. Task to perform are: analyze starting point (P&L and balance sheet), enhance the product value proposition, prepare a sales plan, perform a management audit, prepare the internalization plan, prepare financial planning, write the business plan, identify potential VC firms to present to, analyze offerings, and negotiate a term sheet.

COURSE 6: ETHICAL AND LEGAL ISSUES IN CORPORATE GOVERNANCE

This course involves reading and discussing a specially written novel. The intent of the novel is to inspire readers to wrestle with the problems of the characters, who are involved in complex ethical and moral decisions within the pharmaceutical industry. The novel serves as a starting point for the kind of active contemplation and discussion that truly make people better able to think more deeply about such issues. The students immerse themselves in the story of an international

pharmaceutical company engaged in a hostile takeover of a smaller, but highly successful, competitor. Students experience the tough negotiations, the elimination of dedicated and talented individuals, and the painful shuffling of roles and responsibilities that accompany major change in a modern corporation. Students also confront the complicated (and sometimes conflicting) relationship between social responsibility, legal responsibility, and profit motive, as they witness the company's attempt to establish a new research facility in a blighted town as a consequence of the merger. As students consider each episode, they critique the actions and reactions of the central characters, advise them on next steps, and glean lessons related to negotiation, change management, legal and ethical issues in corporate governance, and working with other cultures.

STORY 7: SELLING AND IMPLEMENTING SOLUTIONS

Students begin their work as new project managers at a premier event-planning company, World Class Events. They begin by qualifying and prioritizing opportunities to propose work to prospective clients, pitching to senior management which of the proposals should receive the greatest budget, based on potential profitability, likelihood of winning, and other relevant considerations. They create a project scope document for the sales effort, first planning and attending a simulated meeting with event-planning experts to determine a vision for the event, including risks and open questions for the client. They then engage in a role-play call with the client, introducing World Class Events and clarifying the project vision.

Of course, the intent of this curriculum is to prepare students to go out into the business world. So, there is a natural subject orientation. The subject is business. But after we acknowledge that, everything else is different. The curriculum was designed with the 12 cognitive processes in mind. Let's see how that was accomplished.

The real issue in learning in any arena of knowledge is getting better at the cognitive processes that underlie that knowledge. The processes involved in learning have been with us as long as there have been humans. School, and subject-based education, is a more recent invention. To understand how human learning works, we need to think more deeply about how we can teach these processes.

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So, we might ask, Where do the 12 cognitive processes get taught in this MBA program?

First let's list the cognitive processes again:

Conceptual processes

1. Prediction
2. Judgment
3. Experimentation
4. Evaluation

Analytic processes

1. Diagnosis
2. Planning
3. Causation
4. Judgment

Social processes

1. Influence
2. Teamwork
3. Negotiation
4. Describing

Now let's consider them one at a time.

Where is prediction taught in our MBA program?

In course 1 (cash crisis), students have to create a financial plan. Any planning document is a serious attempt at prediction. Prediction is covered in a different way in course 2. In that course, students need to predict how users will behave on a website. In course 3, students need to predict the effects of a marketing campaign and predict what will work and what will not work in a product launch. In course 4, students need to predict how changes they make in the supply chain will improve the process. In course 5, students are developing a business model, which is in itself a prediction that certain decisions and behaviors will make money. In course 6, students must predict the effects of various changes in an organization and must predict the behavior of the people with whom they will negotiate. In course 7, students

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predict which sales pitches will work as well as predicting various costs and benefits associated with their product.

In fact, it seems obvious that *prediction* is at the very heart of this MBA program. But so are all the other cognitive processes. Students are always working in *teams* and are always trying to *influence* their peers, their superiors, their customers, and so on. They are in constant *negotiations* and they are creating all kinds of *plans*—financial plans, marketing plans, and business plans. They are constantly *diagnosing* problems in the various stories and constantly creating documents as work products (*describing*). They must determine the *cause* of various problems in each story and *evaluate* solutions to those problems. They make *judgments* about what to do, and what is working and what isn't, in each story and they create *models* of proposed solutions. Each new solution they propose is, in effect, an *experiment,* and they must evaluate the results of each experiment as they proceed.

Now let's reconsider what it means to teach and what is important to teach within the context of a good curriculum. One might have expected, given that there are 12 cognitive processes that must be learned, that each project in the curriculum would be put clearly into one of categories. The schooling mentality naturally leads to the idea that if diagnosis is important, then we should offer a course in diagnosis. But you can't diagnose randomly and you can't teach students to do diagnosis in the absence of an acknowledgment of their real interest and goals independent of a context. While diagnosis is fundamentally the same process whether you are plumber, a doctor, or a businessperson, there is also much to learn about the context of the diagnosis, and real students with real goals will fall asleep while hearing about diagnosis in one context, whereas they will perk up while actually doing diagnosis in a context they find fascinating.

We have designed this curriculum to teach the 12 cognitive processes within the context that was decided upon by the students. No one is forced to take an MBA program. The students are those who want to run their own business or work within the context of a large business. It is the job of the curriculum designer (and the teacher), therefore, to teach them how to think well within that context.

Now I am not saying that this is not done (or at least cannot be done) within traditional schooling. Sometimes it is. A good history teacher does in fact teach about diagnosis and causation and planning. One can think about the Battle of Waterloo and learn a great

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deal about planning, and influence, and causation, and teamwork.

But while this could be true of a good history course, it often is in no way actually the case. If history courses were designed to teach students to think within the context of history, they would be much more important than they now are. As long as we think that history is about getting the facts about who signed what declaration when, we are missing the forest for the trees from a teaching point of view.

Now, of course, some subjects lend themselves very easily to emphasis of the 12 cognitive processes. Science courses could, for example, be entirely about experimentation or diagnosis or causation, and they would be very useful if they were. But instead we encourage learning the facts about who did what experiment and we teach formulas to be memorized and we teach about equations. Experimentation is indeed a very exciting subject. (Ask any 2-year-old who experiments with what best goes in his mouth on a daily basis.) But schooling manages to make it a very dull subject by teaching who did what experiment when.

One reason that we have managed to create dullness out of material that can be inherently interesting is the absurd emphasis on testing that has dominated the world of education in the past years. Below are three questions (quite typical ones) from an AP psychology exam.

Ivan P. Pavlov is famous for his research on

(A) teaching machines.
(B) perceptual learning.
(C) forward conditioning.
(D) classical conditioning.
(E) backward conditioning.

A stimulus that elicits a response before the experimental manipulation is a (an)

(A) response stimulus (RS).
(B) unconditioned stimulus (UCS).
(C) generalized stimulus (GS).
(D) conditioned stimulus (CS).
(E) specific stimulus (SS).

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Erikson proposed that trust or mistrust develops during the

(A) muscular-anal stage.
(B) locomotor-genital stage.
(C) latency stage.
(D) oral-sensory stage.
(E) maturity stage.

Psychology is all about experimentation, but the questions here are about facts about previous experiments, which is very different from learning to design and perform an experiment about something that personally interests you. Psychology teachers cannot teach students how to create a hypothesis and experiment to find out whether it is true, unless they go around the existing curriculum. Since teachers are judged by their students' results on AP tests, this is hardly likely.

Another problem here is that only some of the 12 cognitive processes are conscious. Others are hidden from our conscious minds. If school were to actively try to teach diagnosis, for example, soon enough there would be the 18 principles of diagnosis or a test about who said what about diagnosis. There probably wouldn't be much actual diagnosis unless something drastically changed our conception of what schooling should look like.

The major problem with how we think about teaching is our conception of what it means to teach, as well as our conception of what it means to learn. In school we "know" that one has to learn math and science and literature. I am asserting here that it is that notion, that there are these specific subjects to teach, that has ruined our schools.

There are abilities to teach, not subjects.

Academics designed the school system. To them, it seemed natural that the subjects that they were experts on should be taught in high school. Such a simple thought has created a major problem.[1] Education ought not be subject-based but, in a sense, we can't help but think of it that way because we all went to schools that were subject-based. Even corporate training, which need not be subject-based, tends to be viewed in that way as well, simply because that is the way we have always looked at education owing to our own experiences in school.

Once you set up the learning question in terms of subjects that need to be taught, it is very tempting to use the old tried and true, *Why*

don't we just tell them the facts and any underlying theories? The knowledge metaphor, the one that says that teachers know some stuff that students don't, naturally leads teachers to tell students what they know.

Now let's consider corporate training.

The companies that contract with my company[2] to build courses know that we will not use the *learning by telling* method. Presumably they are frustrated with the results that the telling method has produced in courses that have been built for them by others. (In fact, they refer to it as "death by PowerPoint.") This is why they come to us. Still they can't help but ask the same subject-based question. How could they not? It is all they know. They went to school. They see the world in the way that school taught them to see it.

They don't ask the questions they should ask because they can't. We need to transform badly formed educational questions into properly formed ones. We need to transform subject-based questions into cognitive process-based questions. This means changing statements about the need to manage client relationships into statements about cognition, and statements about product launch into ones about cognition, and so on. What does it mean to make such transformations? It means asking what one does when one manages client relationships or when one launches a product. This is, of course, exactly what we ask clients in our first meeting with them. For example, we ask: *What does one do when one launches a product?*

What I plan to do here is reveal what we do next, namely, the *subject to cognitive ability transformation process*. We must do the transformation properly and then make clear what one does in course design after one has figured out what really needs to be taught.

Let's start simple. Let's imagine we want to train insurance adjusters to decide what compensation a policy owner is entitled to after a hurricane hits his property. (Yes, I do live in Florida, but I can't say I care much about this process personally.) I found this on the Internet covering this subject:

> Catastrophe Adjusting Refresher
>
> **Course Description:** This is a course package comprised of three courses plus a bonus section and downloadable documents.

One of the three courses is this:

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Catastrophe Adjusting Skills and Techniques

Course Description: This is a course package comprised of seven courses plus two bonus sections and a number of downloadable documents.

This online class is for individuals who are new to adjusting catastrophes, such as hurricanes, windstorms, and tornadoes. The course is broken down into two key sections: "Getting Prepared for Adjusting" and "The Actual Adjusting Process." The first section includes a number of course components and background knowledge that can be done in preparation for any catastrophe. The second part of the class takes you through all the steps and processes required for adjusting residential properties. This online package includes everything listed under course topics.

Course Topics:

- Insurance Basics
- Tools of the Trade
- Working with Digital Photos
- Residential Construction Basics
- Claim File Components
- Homeowners Policy Interpretation
- Property Adjusting 101
- Getting organized
- Claim reporting

Course Length: 8 hours

Audience: Property adjusters who are new to processing and adjusting catastrophe claims and need the knowledge and skills required to be successful on the job.

One thing that jumps out here is the time. In 8 hours, the above topics will all be covered.

Wow! Assuming an hour for each subject, this means you can learn insurance basics, or residential construction basics, in an hour if you take this course. What this means in practice, I assume, is that

there will be some text to read and some questions to answer to make sure that you have read the text. Personally, I doubt that one could learn much about any of these subjects by oneself in 8 hours (or even 8 days.) Clearly, they are teaching vocabulary and a few facts. Most of it will be forgotten.

Now suppose the insurance industry had come to me and asked my company to build a course that covered these topics. What would I say? (Apart from: *Are you nuts?—not in 8 hours.*)

I would start by asking what is hard about insurance adjusting. At the same time, I would have already assumed that this was basically a diagnosis task.

Diagnosis is a complex cognitive process that has three important parts. The most important part is the end result. All successful diagnoses result in an answer (cancer, stopped up sewer line, misfiring spark plug, paranoia, etc.). These results are taken from a list of acceptable answers and typically are not in any way inventive. The second part is the case. A prototypical case for all possible results typically is compared with the current case. A match determines the result. The third part is the evidence. To construct a case, one must gather evidence. When more than one prototypical case matches the situation, more evidence needs to be gathered in order to differentiate the cases that might match. Doctors call this differential diagnosis.

How does one learn to do diagnosis? One must know the prototypical case, which often takes years for one to acquire naturally through experience. One must know how to gather evidence, and what constitutes evidence, and one must know the possible set of results. All of this takes a long time to learn. But the process itself is very much the same no matter what you are diagnosing. So, one question we would ask was whether the students in the course had any experience diagnosing anything. It is easier to teach diagnosis to people who have done it before even if the subject matter is different this time. Another question we would ask is how much the students knew about the basics of the subject matter since it is easier to teach diagnosis to those who already know the subject matter.

So when I ask what is hard about insurance adjusting, I have a good idea of what the answer may be. It is probably in one of these three things. Is it difficult to learn all the kinds of cases that there are and what differentiates one from another? This depends on how many

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types of cases there are. Is it hard to gather evidence properly? Probably. It usually is. Is it hard to know all the possible results? It might not be. It might be hard to decide on a result, however, since the result is usually to pay some amount of money, so how much money would be the key question. All this takes practice, so what we really need to know is where the main areas of practice should be.

So now we have a real question to ask:

> Q1: How can we practice gathering evidence, learning about prototypical cases, and knowing how to determine the correct final result in insurance adjusting?

Notice that this is a very different question from asking what an insurance adjuster knows and then asking how to tell students what they should know.

Making the transformation from the list of knowledge given above by the online course offerers into Q1 is the real issue in transforming subject-based education into cognitive process- based education.

Let's discuss a different type of example. My company was invited into a technical college in Peru to discuss how to teach accounting. *Why would you want to teach accounting?* I asked. Because the students need to know it, I was told. *Why?* I said. Because they need it in their work. So I changed the subject. I asked, *What work do most people do when they graduate from your school?*

It turns out most of their graduates ran fast-food restaurants. *Then why do they need to learn accounting?* They need it in order to run a restaurant. I am sure there is some accounting done as part of running a restaurant, but surely not every part of accounting is needed. And, I asked, *Do you actually teach how to run a restaurant?*

Of course they didn't. Why not? Because accounting is an academic subject and managing fast-food employees and ordering meat are not. They hire an accounting professor and he knows accounting and knows nothing about running a restaurant. Even a practical technical school gets caught up in subject-based education in part because it hires graduates from that system who know only what they themselves were taught.

What are the cognitive processes involved in running a fast-food restaurant? Let's see which are relevant.

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Conceptual processes

1.	Prediction	YES
2.	Modeling	YES
3.	Experimentation	YES
4.	Evaluation	YES

Analytic processes

1.	Diagnosis	YES
2.	Planning	YES
3.	Causation	YES
4.	Judgment	YES

Social processes

1.	Influence	YES
2.	Teamwork	YES
3.	Negotiation	YES
4.	Describing	YES

Hmm. All of them. How can this be?

Managing a business, any business, requires one to influence employees, negotiate with suppliers, plan future moves, determine what isn't working, teach employees how to work together, make judgments about people and processes, and so on.

All this should give a hint about how to approach a business that wants to teach its employees to do their jobs properly. One must teach each of the 12 processes, but they need to be taught in the actual context of what people will do when they graduate. This does not mean that for every problem there are 12 courses that need to be created.

While you might need to predict an employee's behavior, this does not mean there should be a prediction course. This is not a problem because there never is such a course. A businessperson has to make judgments, and determine causes of problems, and so on, so maybe we should have courses in each of those processes. But this makes no sense.

We must teach people to deal with the real-life issues that arise in any situation they are preparing to work in. In other words, the

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designer of a course on how to manage a restaurant must focus on the typical goal conflict situations that a new manager would have to confront. The course designer must create a fictional situation where it is necessary to convince an employee to do something or to find out why something that was asked of an employee did not happen.

The magic word is *scenario*. Scenarios are like plays. Things happen and you have to deal with them. A well-written scenario makes sure that all of the processes that could be at all relevant to what you want to teach, occur in this new context. In a reasonable education system, students would have been practicing all of these processes all of their lives. But we do not have a reasonable education system. We have one based in subjects. So our cognitive processes are not rehearsed over time in different contexts by constant practice. Instead we learn knowledge about subjects.

To remedy this, a course designer (and a teacher if the teacher has that freedom) must make sure that as many of the cognitive processes as are relevant to a situation naturally occur within the scenario being constructed to simulate what will happen in real life later on. Not every situation requires diagnosis, but many do. Not every situation has a goal conflict or forces one to make predictions or plans, but many do. If what needs to be taught naturally lends itself to working on any of the 12 cognitive processes, then the training being built must concentrate on that. If there could be diagnosis, then there should be training in diagnosis in that context, and that training must supersede the garnering of facts.

Schools are tough to change. We are trying, but the subject-based educators have a few hundred years head start. However, in designing new training, it is quite possible to reorient subject-based courses and turn them into cognitive process-based courses that are much more satisfying to both the teacher and the student.

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CHAPTER 6

A Socratic Dialogue

> Sit down before fact as a little child, be prepared to give up every conceived notion, follow humbly wherever and whatever abysses nature leads, or you will learn nothing.
>
> —Thomas Huxley

Slave Boy: So it really doesn't matter how you classify a teaching/learning problem because there are many methods that could apply, correct?
Socrates: And what follows from this?
Slave Boy: That it is not the classification that matters but the methods entailed in that classification.
Socrates: And what do all these methods have in common?
Slave Boy: They all involve practice
Socrates: And what else?
Slave Boy: Real experience.
Socrates: And how is experience stored?
Slave Boy: Through cases.
Socrates: Expressed how?
Slave Boy: As stories
Socrates: So what follows from all this?
Slave Boy: That the methodology entailed in each classification of learning types is not the real issue.
Socrates: And what is the real issue?
Slave Boy: Practice
Socrates: And?
Slave Boy: Dialogue
Socrates: Why dialogue?
Slave Boy: Because it is through dialogue that stories are solidified and indexed
Socrates: So the classification of learning types doesn't really matter then, does it?

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Slave Boy: Oh no, dear teacher, I beg to differ. The classification helps us think about the real issues in education.

Socrates: Indeed.

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CHAPTER 7

Knowledge-Based Education vs. Process-Based Education

Diagnosis is not the end, but the beginning of practice.
—Martin H. Fischer

In our society we have set up schools to teach knowledge. We concern ourselves with what facts children know, we test to make sure they know them, and then we complain that the schools are failing when they don't. This idea is so ingrained in our way of looking at schooling that when people like me complain about it, we are seen as people who are rambling around muttering to ourselves.

There are so many people having anxiety attacks about what kids know, it seems one can find an article about it in every news segment on education.

I happened on an article in *Huffington Post* written by someone named Schweitzer who is listed as "having served at the White House during the Clinton Administration as Assistant Director for International Affairs in the Office of Science and Technology Policy." Here is a piece of what he said:

> The health care debate cannot be understood in historic context because many Americans have never heard of Thomas Jefferson. Extrapolating from state surveys, only 14% of American high school students can name who wrote the Declaration of Independence. Nearly 75% do not know that George Washington was our first president. . . . We can say that our educational system has failed when the vast majority of American students do not know enough to pass an exam to qualify as American citizens.

This is an astonishing statement.

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Why do we have such a failed system? Could it be the policies of presidents like Clinton, who pursued a policy of never offending the teachers unions by doing anything threatening to them, like changing the curriculum?

Or, could it be that people such as this writer define education in terms of random facts they wished everyone knew? The problem is not that people don't know who Thomas Jefferson was. If citizens knew who he was, would that mean that they could think clearly and not be influenced by all the special interests who were trying to tell them what to think? If they knew who George Washington was, what exactly would they know about him? That he could never tell a lie? This is obviously untrue, and many have written about what a good liar he actually was. That he was a brilliant general? There is lots of evidence against that. That he owned 300 slaves? This is not usually mentioned. That he married a rich woman probably so he could get her land? Historians discuss this. Schools never do. Nevertheless, people are upset because our students don't know our national myths and some random facts.

The real issue in the healthcare debate is that the general public can't think clearly. That would have a simple explanation. The schools don't even try to teach people to think clearly.

I mentioned President Clinton above, but really all U.S. presidents are culpable. It may not be their fault. Certainly they are given terrible information.

Lamar Alexander, former Secretary of Education (under George H.W. Bush) was speaking in the U.S. Senate recently on restoring teaching history to its "rightful place" and making sure that history was part of the NCLB act. Here is a quote from him from 2006:

> Just one example of how far we are from helping our children learn what they need to know. The fourth grade national report card test asked students to identify the following passage, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness." Students were given four choices: Constitution, Mayflower Compact, Declaration of Independence, and Articles of Confederation. Less than

> half the students answered correctly that that came from the Declaration of Independence. Another question said, "Imagine that you landed in Philadelphia in the summer of 1776. Describe an important event that is happening there." Nearly half the students couldn't answer the question correctly that the Declaration of Independence was being signed.

Politicians never seem to get it about education. What history do students "need to know"? None, actually, unless they plan on being historians, or maybe senators. Now I realize this is a radical point of view, but history is not something anyone needs to know.

Why not?

Because knowing what happened in Philadelphia in 1776 does not in fact make you a better citizen, no matter what Alexander says. Random historical "facts" do not make one a critical thinker about history nor do they promote clear thinking about current political issues. Such "facts" are almost always used by politicians to justify whatever it is they already believe. Understanding how human events typically flow is, in fact, quite valuable, but that has more to do with understanding human nature and prior circumstances than it does with memorizing facts that politicians deem important to know. A good citizen would be one who carefully considered the issues when voting. That would mean being able to diagnose problems and evaluate proposed solutions. But that would produce a citizenry that could ask hard questions of politicians, which is probably not what these politicians are aiming for.

In 1776 we had a bunch of politicians who, if the present set are any example, surely were voting for their own special interests. The fact that we, as a country, feel the need to make them into folk heroes does not make it one bit more likely they were any better or worse than the current people who govern us. What Alexander is really arguing for is more indoctrination—more informing students what to think instead of teaching them how to think.

It would be nice if one simply could point a finger and say it is all the politicians' fault. They really don't want people to think all that clearly. But politicians are only part of the problem.

Recently, a report was issued about the teaching of mathematics, stating:

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> Students who complete Algebra II are more than twice as likely to graduate from college compared to students with less mathematical preparation.[1]

The natural assumption here is that we must hurry up and teach more Algebra II, of course. Except that obviously is not what is going on; it just serves the interests of those who wrote the report to put it that way. Here is another statement from that report:

> Students who depended on their native intelligence learned less than those who believed that success depended on how hard they worked.

The claim is simply this: If you work harder, you get into college. Now the question is: Why are the writers of this report claiming that the thing that students have to work harder at is Algebra II?

It is easy enough to see why this panel decided that. At stake was a $100 million federal budget request for *Math Now*, and the people who were on the panel were people who would receive that funding. University professors issue reports asking for grant money to be approved that state that the nation will not succeed without that grant money. Vested interests are nothing new. I am sometimes amazed that no one points this stuff out, however. *It is well established that everyone must know algebra.* The fact that this is well established by those who make money on the teaching of algebra is never brought up by the *New York Times*, which published a lead article on the report, or by anyone else, it seems.

My favorite part of the *Times* article was the following:

> Dr. Faulkner, a former president of the University of Texas at Austin, said the panel "buys the notion from cognitive science that kids have to know the facts."

Dr. Faulkner, let me point out, is a chemist, and I am pretty sure he doesn't really know much about cognitive science. But cognitive science has been used of late to justify a great deal of what is wrong in education. E.D. Hirsch, an English professor at the University of Virginia, made a career of making lists of stuff every kid should know. When cognitive scientists trashed this work as nonsense, he cited the

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idea that one needs background knowledge in order to read, which is both true and a product of various works in cognitive science.

Hirsch was made to look like a fool so often that he resorted to hiring a cognitive science professor at Virginia, who has written a book justifying the same nonsense with more cognitive science facts.[2]

There is plenty of work in cognitive science that shows that background knowledge helps people interpret the world around them, and thus reading, for example, is facilitated by having knowledge about the world about which you are reading. This idea, however, does not imply that ramming facts down a kid's throat is the way for them to acquire that background knowledge. Knowledge acquisition is a natural result of engaging in cognitive processes that are being employed to satisfy a truly held goal.

If you are trying to find your way around a city, you will learn the streets of that city and develop what is called a cognitive map. If you try to memorize those same streets, it simply won't work. Real knowledge is acquired as a natural part of an employed cognitive process in service of a goal. But Hirsch and Willingham know nothing about cognitive processes. They only know, and talk about, how best to acquire more facts. Politicians listen to them and there are more tests to make sure those facts have been acquired. No one remembers Algebra II or much about the Founding Fathers because that stuff is mostly facts acquired independent of any real goals that will employ those facts. Knowledge is not the real issue in education or in mental life. The real issue is developing facility with doing various cognitive processes. Knowledge comes along for free with practice of these processes in specific domains.

There is no evidence whatsoever that accumulation of facts and background knowledge are the same thing. In fact, there is plenty of evidence to the contrary. Facts learned out of context, and apart from actual real-world experience that is repeated over and over, are not retained.

Why don't kids like school? Because we teach them knowledge that they know they won't need. How do they know this? They know that their parents don't know this stuff—that is how. Many kids don't like math much and it is clear why. They find it boring and irrelevant to anything they care about doing. If we think math is so important, then why not teach it within a meaningful context, where it actually is used? There is plenty of evidence that shows that teaching math

within a real and meaningful context works a whole lot better than shoving it down their throats and following that with a multiple choice test. But for the vast majority of citizens, Algebra II is never used.

There is no evidence whatsoever that says that a nation that is trailing in math test scores will somehow trail in GDP or whatever it is we really care about. This is just plain silly, but we keep repeating the mantra that we are behind Korea in math as if it has been proven that this matters in some way. Nothing of the sort has been proven. What is true is that there are a great many vested interests that need to keep teaching math: tutoring companies, testing companies, math teachers, book publishers, and many others who make lots of money when people are scared into thinking that their kid won't get into college because he or she is bad at Algebra II. Nearly every grownup has forgotten whatever algebra he or she ever learned to pass those silly tests, so it is clear that algebra is meaningless for adult life. Any college professor who is honest will tell you that algebra almost never comes up in any college course, and when it does come up it usually needn't be there in the first place.

So, math isn't important and history isn't important. What is important?

Tests. Tests are very important. Not to me, of course, but my vote isn't being counted.

The past two presidents have been obsessed with raising test scores. I am assuming this is true because some political analysts somewhere have determined that the general public believes in the significance of raising tests scores and will vote for politicians who are able to show that they have done it. There can't be any other reason. Try taking those tests. Most of them are available online. See how well you can do at them.

But what could really be wrong with testing and emphasizing test scores?

TESTING TEACHES THAT THERE ARE RIGHT ANSWERS

The problem is that in real life, the important questions don't have answers that are clearly right or wrong. "Knowing the answer" has made school into Jeopardy. It is nice to win a game show, but important

decisions are made through argumentation and force of reason—not by knowing the right answer. People who know a lot are generally quite smart. I could do well at Jeopardy as could most professors, I would think. But we are not successful intellectuals because we know a lot of facts. We know a lot of facts because we are successful intellectuals. People have got this backwards.

Consider athletes. A great baseball player and a great basketball player, it can be assumed, also will be very good at lifting weights. But they did not become good at lifting weights and then become great athletes. It was the other way around. They had a natural talent for hitting a ball or shooting baskets and then they had to get stronger in order to compete with others who had the same talents. The talent is the reason—not the weightlifting. Michael Jordan, a really great athlete, couldn't become a successful baseball player because he couldn't hit a curve ball. That talent had nothing to do with the athletic ability that made him a great basketball player. Hitting a curve ball is a different kind of talent. His weightlifting ability was the same either way. I know a lot of facts and I am talented at designing educational software. The facts I know do not help with the talent. But the more educational software I design in different domains of knowledge, the more facts I pick up.

When we look at people who are knowledgeable and confuse that with people who can think well, we totally miss the point about education. Education ought not be focused on imparting facts any more than athletic training ought to be focused on weightlifting. You learn to hit a ball by hitting one and you learn to think clearly by thinking. Focusing on the 12 cognitive processes I have outlined, rather than focusing on fact acquisition, helps one learn to think.

TESTING TEACHES THAT SOME SUBJECTS ARE MORE IMPORTANT THAN OTHERS

The tests are small in number. If there were thousands to choose from, then perhaps people could get tested in fiber optics instead of history. But the system has determined which subjects are the most important. The system made that determination in 1892. Some things have changed in the world since then. There are a few new subjects—psychology, computers, medicine, business, and law, for example. Many

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new sciences and social sciences came into being after 1892. But none of those will ever make it into the sacred group of math, science, English, economics, and history because everyone seems to think that the big five were handed down on tablets to Moses.

And everyone is sure that their favorite subject is the most important one, be it history, literature, math, or science. Math and science are having a big moment as I write this. We hear that the nation does not produce enough students interested in math and science. Something must be done.

I was a math major in college. I got 98 on every math Regents test offered. (I lived in New York where testing ruled in the world in the 1950s too.) My mother always asked where the other two points went. I grew up to be a computer science professor. I am not a math phobe. But neither am I a math proponent. I have never used math in my professional life.

I always start any discussion on education by asking if the person I am talking with knows the quadratic formula. One out of one hundred knows it. (The last few times I asked, the people included the head of a major testing service, the governor of a U.S. state, various state legislators, and 200 high school principals.) Then why do we teach this obviously useless piece of information to every student in the world? Because math is important, of course.

Why?

As a person who was involved with graduate admissions for 30 years at three of the top ten universities in the country, I know what this hysteria is actually about. Nearly all applicants to graduate computer science programs (which is what I know—but it is true in most fields of engineering and science) are foreign nationals. We wonder why American kids aren't interested in these fields—which is a reasonable enough question. But then we have come up with an extraordinary answer.

What we say is that we must teach math and science better in high school when what we mean is that it would be nice to have some more American-born scientists.

Do we really believe that the reason that there are so many foreign applicants to U.S. graduate programs is that they teach math and science better in other countries? China and India provide most of the applicants. They also have most of the world's people. And many of

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those people will do anything to live in the United States. So they cram math down their own throats, knowing that it is a ticket to America. Very few of these applicants come from Germany, Sweden, France, or Italy. Is this because they teach math badly there or is it because those people aren't desperate to move to the United States?

U.S. students are not desperate to move to the United States, so when you suggest to them that they numb themselves with formulas and equations, they refuse to do so. The right answer would be to make math and science actually interesting, but with those awful tests as the ultimate arbiter of success, this is very difficult to do. Math and science are not important subjects. There, I said it. Start the lynching. One can live a happy life without ever having taken a physics course or knowing what a logarithm is.

But being able to reason on the basis of evidence actually is important. You cannot live well without this skill (or any of the other cognitive processes I have been writing about). Diagnosis is science as it actually is practiced by scientists. Science is not a bunch of stuff to be memorized. It is the fact-based tests that cause this problem. We don't need more math and science. We need more people who can think.

TESTING FOCUSES TEACHERS ON WINNING NOT TEACHING

Many teachers are extremely frustrated by the system they have found themselves a part of. They cannot afford to spend time teaching a student or getting a concept across if the issues being taught are not on the tests. They are judged on the basis of test scores. So any rational teacher gives up teaching and becomes a kind of test preparation coach. Testing has become a kind of contest between schools, much like football. I like football. But the football mentality that envelops our concept of schooling is a disaster.

Take a look at this excerpt of an article taken from my local paper. What our educators are worrying about is winning the game. Unfortunately, the game has nothing to do with educating students and everything to do with test scores, which are probably less valuable than football scores in predicting anything about the future of children's lives.

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Martin County School District won't settle for B

July 27, 2007

STUART—The Martin County School District was just short of earning a perfect report card from the state in late June.

But the district, which earned 18 A's and one B, has a chance to earn straight A's. School officials are appealing J.D. Parker School of Science, Math & Technology's B grade. The Stuart elementary school had enough points to be considered an "A" school, but because the lowest 25 percent of the school's students didn't make learning gains, the state dropped the grade to a B.

. . . .

Martin had the second-highest percentage of A schools among the state's 67 counties. Gilchrist County had the highest percentage of A's, though the county in northeastern Florida only has four schools.

The district is also filing an appeal for Warfield Elementary in Indiantown. The school received an A, but did not make adequate yearly progress under the federal No Child Left Behind Act, state data shows.

The result of all this is that teachers are now being "held accountable" for their teaching, which is another way of saying, *Get those test scores up or else.*

The following is from an article on the front page of the *New York Times* (December 23, 2007):

Mr. Obama, for instance, in a speech last month in New Hampshire denounced the law (NCLB) as "demoralizing our teachers." But he also said it was right to hold all children to high standards. "The goals of this law were the right ones," he said.

When Mr. Edwards released an education plan earlier this year, he said the No Child law needed a "total overhaul." But he said he would continue the law's emphasis on accountability.

And at the elementary school in Waterloo, Mrs. Clinton said she would "do everything I can as senator, but if we don't get it done, then as president, to end the unfunded mandate known as No Child Left Behind."

But she, too, added: "We do need accountability."

Accountability must play well in Peoria because every politician is for it.

Accountability must mean to voters, I assume, that teachers will be measured by how well they teach their students. Political candidates, always willing to hop on an uncontroversial point of view, are all quite certain that the voters know what they are talking about. No matter how stupid NCLB is, no matter how mean spirited, no matter how awful for both teachers and students, its very horror rests on the premise that no one seems to be disputing that the federal government has the right to tell the schools what to teach and to see whether they are indeed teaching it.

How is this premise wrong?

- It assumes that all schools should teach the same subjects.
- It assumes that some subjects are more important than other subjects.
- It assumes that all important subjects can be easily tested.
- It assumes that seeing who did better than whom in school is an intrinsic part of the educational process.
- It assumes that all children have the same educational needs.

Let's take them one by one.

ALL SCHOOLS SHOULD TEACH THE SAME SUBJECTS

Why is this wrong?

First, it is wrong because subjects aren't what should be taught. But even if one follows the view presented in this book that the issue is cognitive processes and not subjects, cognitive processes need to be applied to actual domains, that are relevant to the life of the student.. Kids in New York come from, and will live in, a different world than their compatriots in New Mexico. In New Mexico, I was asked whether we could teach casino management and land use. Yes, we could, but not if there is federal accountability about algebra and 20 other subjects that make it impossible to fit these subjects in.

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SOME SUBJECTS ARE MORE IMPORTANT THAN OTHER SUBJECTS

Yes, we have electives. But they don't matter. Because accountability means making sure that we first teach what does matter. What matters is the stuff that we are holding people accountable for. Since this seems to be math and science these days, for no good reason I can discern, this means that we will get to the stuff that would excite kids and keep them in school, and might teach them some job skills, after we are done with the important stuff. But I am certain that none of the politicians mentioned in the Times article knows the quadratic formula or the elements of the periodic table, which is, of course, the stuff of accountability since it is so easy to test. Then how can that be the important stuff?

ALL IMPORTANT SUBJECTS CAN BE EASILY TESTED

Yes, there are right answers in math. But are there right answers in whether we should have invaded Iraq? No? Does that mean we can't teach how governments actually work and how to get reasoned arguments to be heard? Is there a right speech political candidates should make? Does that mean we can't ask students to give speeches because we can't easily assess them? Do we teach only subjects for which there are clear right answers? We do now, which is one reason why school is a deadly experience for one and all and will remain so as long as accountability is the key word in government.

SEEING WHO DID BETTER THAN WHOM IN SCHOOL IS AN INTRINSIC PART OF THE EDUCATIONAL PROCESS

It really is all about competition, isn't it? Bush, both Clintons, and Obama are all the winners of the school competition. They went to Ivy League schools, which seems to be the real issue for most parents. I taught at Ivy League schools and I was profoundly unimpressed with the test- taking, grade-grubbing students I found there. The goal of education is not to say who won, and it is not to tell Harvard whom to admit. The goal is provide real-world skills, some of which

may not be so easy to assess until the graduate actually shows up in the real world.

ALL CHILDREN HAVE THE SAME EDUCATIONAL NEEDS

There is more than a 50% dropout rate in many high schools because we have forgotten that not everyone is going to Harvard and that going to Harvard is not the goal of education. Some children simply need to learn about ethics and business and child raising and how the legal system works, how to take care of their health and how to understand when politicians are saying things that make no sense. Why wouldn't those subjects be critical? No politician seems to think any of those are more important than math and science. How about the student who has a passion for the environment, or doing social good, or being a good parent, or running for office? Does every student's school life have to be the same?

STUDENTS LEARN THAT MEMORIZATION IS MORE IMPORTANT THAN THINKING

In an answer-obsessed world, "go figure it out for yourself" or "go try it and see what happens" are replaced by more memorization. Giving kids a chance to fail helps them learn. Actively preventing failure by telling the right answer just helps kids pass tests. In each of the cognitive processes that I presented in Chapter 4, failure is not only an option—but it will happen all the time. One's first hypothesis will be wrong. One will plan badly or botch a negotiation. These processes are all about failure, not right answers. Recovering from failure, getting better next time, is what learning is all about. Learning entails failure and cannot happen without it. The kind of failure I have in mind here is expectation failure. This means that we can fail even when we succeed, because we didn't expect things to happen quite like they did. Our predictions are often wrong. We work at getting better at making them and explaining to ourselves why we were wrong. This process of expectation failure followed by explanation is at the heart of learning. That's what learning is all about. Memorization has nothing whatever to do with learning, unless you want to become a singer.

How can we offer new curricula and new ways of learning if no matter what we do children must pass algebra tests? Each administration says over and over again that science is important, but since science in high school is defined for the most part by boring tests of vocabulary terms and definitions, who would be excited to learn science? If a really good scientific reasoning curriculum were created, the schools could not offer it unless it helped kids pass the very same tests that that curriculum was intended to replace.

We must make radical change. The only way to do that is to stop focusing on teaching subjects and stop using the fact-based tests are the natural end result of that focus on subjects.

An education system based on cognitive processes would look very different indeed.

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CHAPTER 8

New Curricula for a New Way of Teaching

> A smart man makes a mistake, learns from it, and never makes that mistake again. But a wise man finds a smart man and learns from him how to avoid the mistake altogether.
>
> —Roy H. Williams

How do we put all this into practice? First, let's make sure we avoid creating departments around each of the 12 cognitive processes. The organization around subjects, which is the basis of how our schools are organized, is the source of the problem in both universities and high schools.

Subjects create departments. Departments in universities are a serious problem for students and administrators. They represent silos where decisions are made that will help the department prosper. Departments lobby for their courses to be required so they can hire more faculty. They make sure majors in their departments follow certain rules for graduation that are intended to make students scholars in their field rather than practitioners. Departments are the reason students graduate without job skills. Faculty are almost always against practical training. English departments have to be forced to teach students to write. Computer science departments have to be forced to teach students to program in a way that would make them hirable by industry. Psychology departments avoid teaching clinical psychology, which is really what students what to learn more about.

For about 10 years I have been building new online story-centered curricula. The idea behind a story-centered curriculum (SCC) is that a good curriculum should tell a story. That story should be one in which the student plays one or more roles. Those roles should be those that normally come up in such a story. These curricula are intended to teach students how to actually do something. The roles students play

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in the story are ones that a graduate of such a program actually might do in real life or actually might need to know about (possibly because he is likely to manage or work with someone who performs that role).

Stories have been at the center of human consciousness for a long time. People tell stories, and the stories they tell shape who they are. People hear stories and remember those that resonate deeply with them. And, people live stories. The stories they live become part of them in a deep way. While we may easily forget everything about a traditional course we took in high school, we can hardly forget the roles we have played in real-life experiences, especially when those roles went on for a long time and had emotional impact on us.

The central argument here is that good education requires good stories—not solely stories that one is told, however. A good education relies on the creation of stories that a student can participate in and feel deeply about. This means that those stories must include others who are playing roles the student will have to deal with on the job, and that the roles the student plays in the stories must relate to the current or future roles that the student intends to play in his or her career.

The SCC is inherently goal-based. The goals must be those that a student has already. For small boys, for example, it can be assumed that the idea of building a truck or designing an airplane is an activity that would grab their interest. For older students, these would be ones like current or future job assignments. In an online world, it is quite possible to create hundreds or thousands of choices and allow students to pick what they want to do—not what they want to study, but activities that genuinely excite them.

The SCC is inherently activity-based. The tasks that constitute the SCC must relate to goals that the student has and the tasks that people actually perform in the roles that the student will play when the training is completed. Thus, an SCC is made up of a set of real-life types of tasks that make up the bulk of the work done by the student, and a set of events that occasionally interrupt or augment those tasks.

Thanks to a grant from the Kauffman Foundation, we built a full-year (all day, every day) high school curriculum in health sciences. This would be, ideally, used in a high school that offered perhaps over 100 full-year curricula. Students would choose four that they liked and after completing them would graduate from high school. All of the curricula would teach what it is like to live in a part of the real world, as well as allowing for practice in the 12 cognitive processes. It takes

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a while to build these SCCs and they are quite expensive to build, but they cost less than building a new school, so the money could easily be made available.

Let's look at the health sciences curriculum we built.

The year in health sciences comprises nine "rotations," each lasting 3 to 4 full-time weeks on average, in which students experience what it is like to solve the kinds of problems real professionals solve in various specialized fields related to biology and healthcare. These experiences are set in realistic stories in which the students play a leading role. The rotations are conducted consecutively. Students primarily work on assigned projects in teams, although each rotation has independent tasks as well. Each of the rotations was created with the assistance of an expert in each of the respective specialties.

One goal of the curriculum is for students to discover that practicing science is fun and relevant to real-world problems. They also should develop a sense of what it would be like to work as a practitioner in the various health sciences fields, so they can decide whether they might someday like a career in healthcare or biology. Of course, the real goal is to enable practice in the 12 cognitive processes. Let's see how that happens.

The rotations in the year in health sciences are:

1. *Internal Medicine*—Students diagnose and develop a treatment plan for a fictional patient who has a major illness and ultimately requires an organ transplant as a part of his treatment. Students also make judgments about ethical issues related to transplants, following a principled approach to ethical reasoning.
2. *Nutrition Advisor*—Students coach fictional nutritional advisors on their management of teenage clients' nutritional concerns and issues. During the process they also develop nutritional plans for themselves and for a peer.
3. *Super Worm*—Students work for a fictional philanthropic billionaire who asks them to invent ways of modifying the common earthworm so it can more efficiently improve soil to better supply the world with food.
4. *Sports Medic*—Students diagnose and develop treatment plans for patients who have sports-related injuries. In the process students produce in-depth reports on additional issues related to sports medicine.

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5. *Designer Genes*—Students consider ethical and political issues related to genetic engineering, for example, cloning, gene therapies, and the manufacturing of drugs. In the process they learn about DNA and the basics of genetic engineering.
6. *Plant Plague*—Students working for a fictional county farming agency are faced with an anomalous powdery mildew that has infected wheat in their local area. They investigate how the new strain of mildew arose and how it spread to this area and crop in particular. They work to develop a treatment for the current crop; then they develop a way to alter the wheat or the way in which it is grown to prevent future fungal outbreaks.
7. *Medical Detective*—Students work with the fictional county medical examiner to conduct medical investigations. They are asked to determine the time and cause of death for various mysterious cases.
8. *Cutting Costs Without Cutting Care*—In this rotation, students consider business aspects related to healthcare. Students play the role of a hospital consultant whose job it is to discern why the hospital is losing money and make recommendations for correcting the situation. In the process they confront ethical issues related to cutting costs in the area of healthcare.
9. *Outbreak*—In this rotation, students work in the areas of infectious disease, epidemiology, and public health administration. They begin by diagnosing the cause of a fictional patient's infection that stems from bacteria in a food item. They then learn that many people across the country have been found with similar illnesses. Students have to develop a plan to manage the outbreak due to the availability of the food item to a wide population. Later they are fictionally hired to develop a readiness plan for a possible worldwide pandemic.

Students spend weeks in each rotation. What do they learn?

Remember, the answer cannot be that they learn about health sciences. Why not?

Because that is really not the issue. No high school student learning a subject really learns that subject. Students forget what they have

learned in a day or in a week or a year. Professors always assume that entering high school students need to be retaught the basics. They may pick up the general idea but in reality the content of the subject area is, at best, vaguely understood. What they can learn is that they like a subject or have an interest in learning more.

The only other thing they can learn involves the 12 cognitive processes. So let's look at how the health sciences curriculum covers these processes.

By explicit design, all of the health science rotations emphasize all four of the "social processes." The students work in teams (*teamwork*), sometimes even in collaboration with other teams. The students and teams necessarily try to *influence* one another, *negotiate* with one another, and constantly have to *describe* their points of view and their results. The step-by-step instructions that are part of every rotation explicitly discuss how best to handle this. Now let's look at four of the rotations in detail.

INTERNAL MEDICINE

The essence of this rotation is learning about how to do diagnosis, in this case, of liver disease. Students watch a detailed interview with the patient, select (after some orientation) specific tests to administer, receive the results, and report suggested diagnoses. They must communicate what they have discovered. So they describe the patient's symptoms and must analyze and discuss the causation of the patient's symptoms. Then they begin to plan a course of action. Planning what to do is a major component of this rotation. To do this they must make a judgment as a crucial part of the diagnostic work. They must do this again as well in the ethics unit that occurs later in this rotation. In that unit they undertake a detailed study of both medical and ethical issues in liver transplantation—which is where evaluation comes into play. Here the students become consciously aware of their values as they decide how to influence medical and ethical choices.

SUPER WORM

The students plan carefully for this unit (a hypothetical redesign of the earthworm to make it even more helpful in agriculture). Hypothetical

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experimentation is performed repeatedly as the students predict the effects of various modifications of the worm's anatomy. Describing their conclusions is important—the project's goals; the worm's anatomy, physiology, and behavior; and the interaction of anatomy and function.

SPORTS MEDIC

The core of this rotation is four athletic injuries. In each case the students examine the patients, describe their observations in detail, and perform a formal differential diagnosis. The students must use judgment and modeling to predict the effect of providing a competitive athlete with an artificial bone implant.

DESIGNER GENES

This rotation has three primary activities. In all three, evaluation plays a role as they discuss genetically modified animals, crops, and muscles. Describing, planning, and influence all are involved as the students prepare a congressman for hearings. All four of the social processes come into play in formal debates.

What should be clear here is that what the health sciences curriculum seems to be about and what it is actually about are very different things. It seems to be about teaching health sciences content, when what it is really about is having students practice various cognitive processes that occur again and again throughout life. This was the goal of the design, pure and simple: to help students practice thinking. It really doesn't matter what arena they are thinking in. We get them interested in thinking by having them think about something that interests them and is connected to a world they may wish to explore later on in life. They may indeed learn something about that world as well, but the point is the cognitive process-based education, not the subject-based education.

I thought of the idea of building SCCs instead of using the normal set of courses that constitute most students' school year when I took a job with Carnegie Mellon University (CMU) as the Chief Education Officer of its new West Coast campus, located in Silicon Valley. There

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were no faculty located at this campus, since Carnegie Mellon is in Pittsburgh. I took this as an opportunity, not as a problem, since faculty want to teach the way they always have taught. Lecturing is easy and faculty like to do it. Students have learned to cope with lecturing and later cramming for tests, so no one complains much. No one learns much from this, but no one seems to be too concerned about it.

I was asked to design master's degree programs in computer science. It seemed to me that students entered a master's degree program because they wanted to get a good job after graduation, so I asked what jobs they were preparing for as I looked at each Pittsburgh campus program. Even though the faculty in Pittsburgh had been teaching these master's degree programs for years, faculty members were surprisingly unconcerned with what students did after graduation. They just taught their courses, their specialties actually, and assumed the students would find value in them. This seemed an odd state of affairs to anyone who looked at it from the outside, but as professor I know that faculty are rarely concerned with master's degree students at all and naturally wouldn't have given these programs that much thought.

There was a great deal of hostility to the SCCs that were built by my team and me. They were seen as threatening the existing structure of courses and lectures. Nevertheless, the students liked them a great deal and the people who mentored in them, after some initial resistance, began to like them and promote them. This happened in the areas of software engineering and software development.

The faculty in e-business liked what we had built so much that they got rid of the existing course-based, e-business master's degree they had offered in Pittsburgh and now offer only the SCC version on the main CMU campus.

SCCs work and work well. Students learn actual skills and teachers feel like they are helping students do something real. But faculty, who are used to the old classroom-style method, often resist doing the hard work now required of them. This is true for students as well. One mentor in the West Coast e-business program who himself had graduated from the Pittsburgh classroom-based program said that he felt sorry for the kids on the West Coast campus because they had to work so hard. He noted that they were learning a lot more than he did but that he had liked sitting in the back of the classroom and ignoring the teacher. It was much easier and he had done well at that.

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A story-centered curriculum is intended to teach cognitive processes, not subjects. Subjects are, of course, covered, but they are not really the point. Certain things need to be done again and again in life, but those things can be learned only in context, not as an abstraction. Different contexts must be provided in order to motivate students and to provide real-world skills that will be remembered, not because they were studied and tested, but because they were practiced again and again.

What is life like in a story-centered curriculum? The first ones we built were built as master's degree programs at Carnegie Mellon's new West Coast campus. Here is Max Soderby, a mentor in the first one of those master's programs, talking about his experience:

> I am almost jealous in a way because I see that they are gaining skills more rapidly than I gained them when I was a student in Pittsburgh at CMU's campus. They get exposure to things that we just talked about in a lecture hall, whereas they are actually doing it: implementing actual software and putting designs into practice. We mostly did homework and talked about it in a lecture hall. So I am jealous in that respect. It is also a lot more work, but that work pays off for the students.

Subject-based education is not really supposed to be training for work. I once proposed to the president of Yale (Bart Giamatti) that we build a master's degree program in an area of computer science that would help get people jobs after graduation. He said that that was training and that Yale does not do training. The academic subjects taught at Yale are meant to produce scholars. But, in a way, he was very wrong. Yale does do training. Yale and almost all other colleges are divided into departments, and a major in a department's subject typically is seen by the faculty as preparation for an academic career in that subject.

The students may well have a different point of view, however. Unfortunately, they come away disappointed. An English major could be hoping to become a journalist, but the education that he will receive is more likely to be appropriate for creating an English professor. A math major may well want to be an actuary, but will not learn actuarial science at Yale. He will learn to be a potential mathematics professor. And, worst of all, in my own field of computer science, the

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very idea that a Yale degree would make you capable of getting a good job as a programmer is frowned upon by the faculty. They are training computer science professors. This is the logical end result of subject-based training.

Now, what Giamatti had in mind as the end goal of college, training for the mind, is a noble enough ideal, and a natural outcome of cognitive process-based education. The classic liberal arts view of education, one that a reader might think I am not in favor of, is actually a better model than the model that has evolved in the nation's top universities. The idea that you should try thinking in a variety of fields is a better plan, and one more in line with what I am proposing here, than the model that exists on most universities' campuses. The latter model, the one that makes students major in a subject and thus supposedly become prepared to work in that field, is really just a big lie.

There is nothing unusual here. Here again, is a statement from the Ivy League professor whom I quoted earlier:

> There is an unspoken rule at places like my university that if you are really good, you do exactly what your teacher does.

So what are these schools training students for? It could be only one thing—to become professors. There is no attempt to teach practical real-world applications of the ideas taught in classes, in part because the faculty themselves don't know those applications. Here is the Big Ten computer science professor again:

> There are roughly 60 faculty members in computer science. They cover all the traditional areas of computer science. Ironically, software engineering, which is what 90% of the undergraduates do when they graduate, is not covered. It is not considered an intellectual or academic discipline. It is considered too practical. There is only one software engineering course and it is taught by an adjunct because no one really cares about it.

This is a real problem because (the Big Ten professor again). . .

> There are hundreds of computer science majors here. The faculty doesn't feel it needs to change because there are students

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> clamoring for what is now offered. Ninety-eight percent of them want to be programmers. Almost none of them want Ph.D.s.
>
> I cannot go to a faculty meeting any more. I get into a fight at every faculty meeting. I argue about teaching and education and they think they know because they are professors. I cannot subject myself anymore to their abuse.

These problems exist precisely because of the subject-based education system. That system is about factual knowledge, and it is this emphasis on factual knowledge that has given rise to the testing mania that has swept the country. These problems exist because the real mission of the university is very different than the general public imagines.

Here is a quote and a story that I rather like:

> A university is what a college becomes when the faculty loses interest in students.—John Ciardi
>
> Benjamin Franklin told the story of some Massachusetts commissioners who invited the Indians to send a dozen of their youth to study free at Harvard. The Indians replied that they had sent some of their young braves to study there years earlier, but on their return "they were absolutely good for nothing, being neither acquainted with the true methods for killing deer, catching beaver, or surprising an enemy." They offered instead to educate a dozen or so white children in the ways of the Indians "and make men of them."(From *Benjamin Franklin, An American Life*, by Walter Isaacson)

What has changed? Key life skills no longer include catching beaver. Otherwise, things are pretty much the same. Change "catching beaver" to any modern daily skill, and Franklin's story is just as valid today.

What do students really learn at a great university? Parents never really ask this question. They just know that their kid got into a good college and that their child is lucky to go there.

Should you avoid sending your child to top schools because they don't teach so well there and really don't plan to improve the situation any time soon?

No. Of course not. If your child gets into Yale, send her there. It is a great place. But you should know what Yale actually has to offer and what it doesn't.

If your child wants to be a professor, Yale is the place.
If your child wants to be an intellectual, Yale is the place.
If your child wants to go to law school, Yale is the place.
If your child wants to hobnob with the best and brightest, Yale is the place.
If your child wants to have a fun time for 4 years, Yale is the place.

Then what is wrong?

There is a problem only if you think that there is a different reason to go to college than the reasons I have listed above.

Oh. There is this other problem. Many of the other 3,000 colleges are trying very hard to imitate Yale. They attempt to provide similar experiences and they can't pull it off. Yale is a unique place. The nation can afford only so many unique places, however. We cannot afford having the main university of a state thinking it is Yale, as my state university friend suggests. If every university has as its main focus research and not education, then the best and brightest of each state will be trained, not necessarily willingly, to be academics rather than practitioners. There will be a great many students who came to school for an education that will help them in their future lives who will be disappointed to find out that that is not the type of education being offered.

Professors at Yale are playing the prestige game. Unfortunately, they are hardly alone in this.

My state university professor again:

> We definitely want to be part of the superstar system but we have no superstars. If we had them, we would probably lose them to Harvard and Yale anyway. Nevertheless, we are obsessed with the National Rankings put out by places like *U.S. News and World Report*. Faculty and deans say they are not obsessed with them, but rankings are an important part of the evaluation process and shape a department's growth. We want to be in the top 4 or 5 universities. We are not but that's what we want to be.

U.S. News and World Report's annual rankings weigh heavily on the minds of the faculty and administration of universities who are in the prestige game. These rankings are based on numbers: average SAT scores of admitted students, average rank in class of admitted students, faculty publications, and many other numbers that come out in favor of research universities with world-class faculty. But world-class faculty means faculty who care about research and not about teaching. While there certainly is no harm in going to Harvard or Yale, the success of their students hardly depends on what they learned in those places and depends a great deal more on the fact that the best and the brightest are the ones who go there in the first place.

These places get away with teaching courses in obscure issues in literature and history, or in economic theory or in complex mathematics, by pretending that they are really teaching students to think. But does knowing obscure information necessarily imply that one is a good thinker?

A good thinker, I claim, would be good at each of the 12 cognitive processes.

What does it mean to be good at prediction, for example? Is a 2-year-old good at prediction? Is a dog good at prediction? Is a professional gambler good at prediction? Is a stock trader good at prediction? Is a mother of a toddler good at prediction? Is a politician good at prediction? Is a scientist good at prediction?

We actually are quite good at assessing the ability of others at prediction precisely because we have data to support our conclusions. We know how good gamblers or stock traders are at predicting. If they are very successful, we can say they are brilliant at what they do, or we can say they are lucky. Those are our choices.

The same is true of scientists. Most scientists make predictions, and those that are proven right are seen as brilliant. Luck enters into science as well and quite often scientists say that a given Nobel Prize winner was lucky and isn't really all that bright.

Dogs are seen as being smart (for a dog) when they can correctly predict the arrival of their master or bad weather or threats, and are seen as stupid when they bark at thunder. Their behavior is seen as stupid precisely because of the erroneous prediction that barking will scare the thunder away. A dog's inability to predict is exactly why we think dogs are dumb animals, and when they surprise us with an accurate prediction, they are seen as smart. Of course, we don't expect dogs to predict who will win the big game. We know their limitations.

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But it is not only the accuracy of predictions that factors into our sense of a person's or an animal's ability to think. We say that a person is intelligent even when he predicts badly, if he gives good explanations for his predictions even though they don't pan out.

So when a sportscaster gives his prediction about the outcome of an upcoming game, we think he is intelligent if he has thought it out carefully, and if his explanation is coherent, and if his reasoning is sound, and we give extra credit if some of his ideas are surprising in some way. So, even if he subsequently turns out to be wrong, we still think he is good at thinking.

But prediction is actually quite complicated to judge. We respect great predictors. We think people who can predict well, especially those who can explain their predictions well, are very intelligent. But, often, we see intelligence when it may not be there. The reason is scripts. And we may fail to see it when it is there. The reason for that is explanations.

Scripts and explanations are at the beginning and at the end of intelligent behavior. What do I mean by that?

When a child is learning about the world, she is learning the scripts that commonly are followed in the world that she inhabits. I have explained this at length in two different books,[1] so I will just summarize here.

Scripts tell us what will happen next in the aspects of the world that repeat frequently. Anyone who goes to a restaurant knows that when you order food, someone will bring it to you and later you will be expected to pay for it. There are lots of variations on this standard restaurant script, however. It doesn't work quite like that at Burger King. The script is different but there is a script there too and we learn it if we frequent Burger King. The restaurant script has many variations and we are initially confused when we encounter a new one, but we learn through repeated practice. And, we generalize so that we can understand that the McDonald's script is pretty much the same as the one at Burger King.

We can predict what will happen next in the world based on experiences we have repeated. Following scripts is so normal that it is not seen as a sign of intelligence to be able to do it. We don't exclaim: Wow, he predicted that the waitress would bring what we ordered and she did. Amazing!

But the opposite is certainly seen as a sign of stupidity. Once one has experienced something many times, one should know what will

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happen next in that arena. Dogs usually know the scripts that pertain to them, as well. They know which merchant will have the dog biscuit for them, for example.

People seem astonishingly dumb when they can't predict what is obvious to everyone else. Not knowing what will happen next in a script you don't know, because you don't have the relevant experience, means nothing at all, of course. The question is: If you have experienced something repeatedly, why haven't you figured out that what you have seen before will happen again?

Script following is, therefore, a sign of intelligence but a very limited one. We can blindly follow a script, and this can make us seem dumb indeed. Since scripts vary one from the other in many ways, the ability to see the nuances makes all the difference. Expecting that a fast-food restaurant will be the same as a three-star Michelin restaurant because it is a restaurant after all is what makes people seem stupid. Failing to make the right generalizations indicates a lack of thought.

The real question is this: What do you do when your script fails? This is important because scripts fail all the time. You expect something to happen and it doesn't. You love the cheesecake at Lindy's and suddenly it doesn't serve cheesecake. Or you find that Lindy's is now out of business. What do you do? People recover from script failure on a daily basis. How they do this tells us a lot about how the mind works.

When people refuse to abandon the generalizations they have made, they immediately are perceived as being stupid. When a medical assistant asked me the other day about the upcoming Thanksgiving holiday, I responded that I would be eating duck instead of turkey. She said that sounded awful and that duck was greasy and gamey and it sounded like a terrible idea. I asked her if she had ever eaten duck and she said no because it was game and she hated game. I told her it wasn't gamey. She refused to believe me. I was about to recommend trying magret de canard but thought better of it and asked if she had ever eaten in a French restaurant in her life. She said that she hadn't.

People who have scripts often generalize them so that in their own minds they experts on things that they have never experienced. This is what stupid looks like.

On the other hand, we might wonder what smart looks like. Let's imagine the same woman with the same beliefs hearing me say that duck was not gamey or greasy. Intelligent people respond, when they

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are confused, or when a long-held belief is challenged, with a request for evidence. She might have asked where she might try duck or what duck tasted like since she had not understood it correctly. She might have allowed for the possibility that she was wrong and asked to know more. But she didn't. People who aren't intellectually curious rarely do.

This kind of dull thinking is not so much a matter of genetics as it a matter of not having been educated properly. And, that is, of course, the real issue here. If a child grows up in a world where questions are expected and where long-held beliefs can be abandoned because of new evidence, he will seek such interactions. But a child who grows up in a world where adults set themselves up as knowing everything and no one's beliefs are ever questioned, you will get mindless behavior like this.

Of course, it doesn't matter if this woman doesn't try duck. It is likely, however, that this behavior pattern—learn rules and never question them—pervades her life. This leads me to my main point.

Scripts are great things to have. They get you through the airport. They get you through Burger King. They get you through most of the mundane aspects of life. But scripts need to be modified. They fail all the time. The airport starts a new check-in procedure. The restaurant you always go to deletes your favorite item from the menu. The store you always shop in is getting very crowded. At some point we encounter script failure and we deal with it. The question is how.

We deal with script failure using two key procedures. It is our facility with these procedures that differentiates intelligence from stupidity. Thinking depends on them, and everyone must do them when trying to think. But not everyone does them well.

The procedures are:

Generalization
Explanation

These are not new ideas in the context of this book. Explanation is one kind of describing. Generalization is the method by which we do prediction, make judgments, do diagnosis, and determine causation. We generalize whenever we try to think.

This entire book is a generalization. It is an attempt to make sense of a vast array of information. That is what generalization is all about. The book is also an explanation of the generalizations I have

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found to be true. At the core of thinking, you find generalization and explanation. But it is important to remember that what starts the process of generalization and explanation is failure. Without failure we don't try to generalize and explain because we have nothing to generalize and explain. Thinking, therefore, looks like this:

Make a prediction
Prediction fails
Make a generalization
Explain your generalization
Make a new prediction

Let me explain how this works and why one cannot think well if one cannot do this. To explain, I will tell a personal story relating to my own thinking and learning with respect to two of the twelve cognitive processes. I will explain afterwards why I have chosen to tell stories and why I have used personal ones.

DESCRIBING

Let's start with describing. There is, of course, an art to describing. Anyone who writes and anyone who speaks publicly is learning all the time about describing. Since I was a professor for 30 odd years, and since I have written hundreds of papers and about 25 books, and since I have given numerous keynote speeches around the world, I have been thinking a great deal about describing for many years. I learn something whenever I speak publicly because I can easily tell whether I am being heard or not. Are the listeners on the edge of their seats or are they half asleep (or literally asleep)? I learn when I write because I read the reviews, and colleagues are always happy to tell me what was wrong with what I wrote.

Once, I was given a lesson in public speaking by someone older and wiser than me that I never forgot. I recently had been hired at Stanford as a professor. I was pretty young (22) and full of myself. In those days, the Computer Science Department ran a course for new graduate students that served as an introduction to all the special research possibilities in artificial intelligence for those who wanted to enter that field. There were many faculty in AI at Stanford and each

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got a week to talk about what his work was about. The goal was to try to convince students to sign up for a special research seminar with that faculty member the following quarter.

My champion at Stanford was a psychiatrist named Kenneth Colby. He invited me to share his week and thus we would be a team for which students could sign up the following quarter. I listened to his talks to the students. He was very funny but rather light on content, in my opinion. I wasn't impressed. But, after I spoke, he said something to me I never forgot. He said: If you try to say everything that you know in an hour, either of two things is true. Either you can do it and therefore you must not know very much, or else you can't do it and you will talk way too fast trying to fit it all in and you will be generally incomprehensible.

I listened to what he had to say, but I wasn't sure he was right. At the first meeting of our jointly run seminar, we discovered that we had won the student jackpot. While other faculty had gotten four or five sign-ups, we had gotten 25. I was very proud of myself until the students went around the table to say who they were and why they had signed up. Not a single one of them had signed up because of anything I had said. They had been mesmerized by Colby.

Then I reheard in my head what Colby had told me the previous quarter. He had entertained them—not overwhelmed them. They thought he would be interesting and fun and they wanted to work with him. While I had looked down on his lighthearted presentation style, it turned out he knew what he was doing.

So, what did I learn and how did my thinking change? Thinking, as I said earlier, looks like this:

Make a prediction
Prediction fails
Make a generalization
Explain your generalization
Make a new prediction

What was my prediction? I had predicted that speaking quickly with a great deal of brilliant content would woo the incoming students. This was simply wrong. I needed to make a new generalization. Fortunately, I did not have to do the work myself. Colby had helped me by supplying a generalization that he believed to be true. (Good teachers

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do exactly this: They supply generalizations when a student needs one and cannot come up with one by himself after a prediction that he made has failed.)

The generalization that Colby supplied was, more or less: Be entertaining if you want to attract followers and be listened to.

Was he right? Is this a good generalization?

The next step in thinking is: Explain your generalization. What this means here is that I needed to understand why this might be true. If possible, one wants to test out the new hypothesis. Fortunately for me, I had many opportunities to speak in public over the next 40 years. I tried many different methods of teaching and lecturing. Entertaining always works. Colby was right.

But I said that one needs to explain why it works. This is my explanation: People have trouble paying attention to someone who talks for an hour. Human beings are not built for this. Our ancestors certainly didn't listen to lectures. People communicate best by asking questions and interrupting. Since this isn't possible in a lecture, any questions they might ask, they ask themselves and try to answer. While they are thinking about what a speaker says, the speaker keeps on talking. No one can really hear a lecture, in my opinion. So, a good speaker, recognizing this, does not try to make the audience do that. He makes them laugh, he paints interesting pictures for them to ponder, he amazes them perhaps, but he does not try to get them to, nor does he expect them to, remember all that he has said. The less content, the more likely they will remember. Colby knew all this. I learned it over time. He jump-started my thinking.

By now, this new generalization of mine, together with my explanation, is part of my core beliefs. But any belief can be challenged by reality. And, any new belief generates new predictions. So I predicted that if I was funnier when I spoke, people would appreciate what I said more. I also predicted that if I didn't speak much in a graduate seminar and let students argue with one another, they would get more out of it. After 40 years I still believe these things. But, and this is the important part, there are nuances upon nuances about all these issues in my memory. I need to explain it simply when I write or speak about it, but when I think about it, I recall all kinds of exceptions and caveats. I know, or at least I think I know, a great deal about speaking and have lots of memories about specific successes and failures. Thinking and learning require one to recall one's experiences, analyze those experiences, come up with new hypotheses about failures, make

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new predictions, and be prepared for these predictions to fail. This is what thinking looks like no matter which cognitive process is being thought about and practiced.

DIAGNOSIS

Now let's talk about diagnosis. Again I will start with a story. This is one I have been telling for a long time because it informs us about how the mind works.

I was discussing with my colleague (Bob Abelson) how it could be that my wife could not seem to make steak rare (as I like it—she is no longer my wife, but not because of this). Bob responded that he couldn't get his hair cut as short as he wanted in England 20 years earlier.

This seems on the surface to be a rather odd response, but when we look deeper we can see that I was saying something like, She could do this right if she wanted to, and he was thinking, Maybe she thinks the request is too extreme, as happened to me with a barber in England many years ago.

Matching odd situations to other odd situations and seeing the similarity is what creative thinking is all about. Bob was trying to diagnose a problem that had been on his mind for a long time, and my new story provided him with new evidence to think again about what the proper diagnosis might be. This is what thinking looks like. It is also what reminding looks like. People get reminded precisely because they are trying to match a new situation to one they already know about and thereby determine what to do next. To put this another way, diagnosis depends on prior diagnosis. We constantly are trying to improve our diagnostic capability because we always strive to make better decisions no matter what arena these decisions are in. The fact that the improvement of diagnostic capability is not explicitly part of each and every curriculum in school is scandalous.

When we design new curricula, we need to ground them in some realistic framework that will enable students to practice things that they might end up doing in the real world. But that does not mean that the real issue in designing these curricula is anything other than teaching thinking, that is, enabling practice in the 12 cognitive processes. However, teaching thinking in the absence of a context that truly interests students is absurd.

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CHAPTER 9

How to Teach the Twelve Cognitive Processes That Underlie Learning

The art of teaching is the art of assisting discovery.
—Mark Van Doren

We need to completely redefine what we mean by school and what we do in school. We need to think about education in a new way. Rather than wanting people to be educated, which usually means being able to quote Shakespeare or nod sagely when Freud's name is mentioned, we need to expect people to be able to think well. Education would be better defined by defining an educated person as one who can make well-reasoned arguments for what they are about to do.

We must focus on teaching cognitive processes and abandoning the subject-based (and test-based) education system we have now that is clearly failing. The reason we have all those tests is simply because we have no idea how to make people learn all the stuff that is part of that subject-based system without threatening them. No one really wants to learn the Pythagorean theorem or information about the Taft Hartley Act. Let scholars know about these things; the average person just doesn't need to know this stuff.

But all people do know how to find and use the mathematics they need when they have continually practiced it, and they know how to find prior relevant experiences when they have to come up with a new plan they want to propose. That simply does not mean we have to tell it all to them years before they might ever make use of it.

In the age of the Internet, just-in-time learning is a serious reality. We can change things now in part because we have information readily available online. But the Internet has been designed by committee. It has much in it that is nonsense, and finding what you need just in time can be quite difficult. Still, it would not be that complicated to design a different kind of Internet, the moral equivalent of *Encyclopedia*

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Britannica, if you will. It would be filled with knowledge from experts that had been vetted by other experts and delivered seamlessly without your having to search for it. You don't need to be a scholar in order to make reasoned decisions. You just need to know how to find information to help you think things out well. This means that learning to think clearly and knowing how to assess the value of new evidence that one has found, must be the main goal of any school system.

When does school start to falter? One way to think about school is to ask about the significance and age-related properties of each of the cognitive processes. Let's see if we can rank the processes in terms of age. Which of these processes would we expect a child who was entering school to already be able to do? To put this another way, a normal 5-year-old:

1. can make some accurate predictions about very simple things, like where his mother might be and what she might be doing and what will be on television
2. would have trouble modeling any process
3. has a limited sense of evaluation but knows what he likes
4. would be able to experiment with simple things like food and toys
5. might be able to do limited diagnosis of what might have gone wrong in a process, but it typically would be limited to explanations that he had heard from someone else
6. might be able to do limited planning based on plans that had been used before
7. might know something about causation because he would have been told about it and remembered what he had been told
8. can make some judgments based on his own tastes and what he has been taught about what is good and what is bad
9. can do some describing, but typically is not at all good at it
10. should be able to influence some people, especially his grandparents
11. should be able to work in a simple team together with kids his own age toward a goal
12. should be able to do some simple negotiation, especially with his parents, siblings, and some friends

So, upon reaching school age, a child can do some of the cognitive processes. Now the question is, How to we teach him to get better at them?

First let's see what the cognitive processes fundamentally have in common. This will give us a way of thinking about how to teach them.

The first and most important thing they have in common is that they all rely on a case base. We have all engaged in each of these processes many times and we have a range of experiences we can call upon to guide us the next time we find ourselves doing them. Each process relies on a story base as well. We can tell stories about interesting experiences we have had in doing each one of them. Stories usually revolve around failures, or at least unexpected results, since without these there are no good stories to tell. Engaging in any cognitive process includes the possibility of making a mistake during the process. We expect to get smarter each time as a result of any mistakes we make. This is what cognitive processes are like. We learn cognitive processes through experience and we index the failures we have so that we can find them again and perhaps avoid making the same mistake. When we avoid an error that we know we have made previously, we say that we have learned.

It follows, therefore, that acquiring a case base, learning the stories of others and learning to tell our own stories, and learning classic mistakes and being able to analyze behavior to find a mistake are all aspects of learning the cognitive processes.

Acquiring the case base and consciously analyzing the cases in that case base, then, is the fundamental issue in teaching the cognitive processes.

HOW TO TEACH PREDICTION

We live in a physical world but we also live in a social world. Children need to understand that if they drop something heavy on their foot, it will hurt; they also need to know that if they do something mean to someone, the person may dislike them for it and may seek revenge. We use predictions to figure out what will happen as a result of our actions and then we use that knowledge to guide us in our future

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actions. What kinds of predictions do children regularly make, then? And, what can we teach and how can they learn?

1. Children predict the actions of the people that they interact with, but they do not necessarily realize that they do this.
2. Children predict the reactions of objects and actions in the physical world, but they do not necessarily realize that they do this either.
3. Children predict their own feelings and mental states. They do things that they think will make them happy, but they don't necessarily realize that they do this either.

These three worlds, the social, the physical, and the mental, are at the center of what adults make predictions about. We predict the speed of an oncoming car and decide whether we can cross the street safely. Children may not do this so well. We predict what will happen when we scream and yell at someone, but children may not predict this too well either. We predict events that will make us happy or sad, such as taking a nice vacation, or playing a game, or a good meal, or establishing a relationship with another person. Children do not consciously think about such things.

But adults do think about these things, so where do children learn about them? At the present time, the answer is that they learn about them as events happen randomly in their lives. If they are lucky enough to have someone helpful to talk with about their experiences, they may, in fact, become good at analyzing how the world works and making their predictions conscious. Getting better at prediction is the cornerstone of living one's life in a satisfying way. One can, of course, get better at prediction by simply thinking about it—this is how most people do that today, of course. But not everyone is capable of doing that and, clearly, most adults are not all that good at making important predictions in their own lives. (This is one reason that there are bad marriages, financial counselors, clinical psychologists, and prisons.)

What helps teach one to predict is to hear about the experience of others and to be able to reflect on one's own experience. This means that having experiences to reflect upon, and people who are knowledgeable to discuss those experiences with, is at the cornerstone of learning to predict effectively.

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This should start as early as 1st grade (or age 5—I don't really believe in grades).

How do we do it? We design experiences for children that are age appropriate and talk about what will happen in those experiences before they do them and how they can learn from and improve upon those experiences after they happen. Then they undergo a slightly more complex experience that builds on what they learned. The process is simple enough. The question is what experiences to design, how to design them.[2]

I should note that prediction is used as a teaching methodology in schools today, especially in reading. I suggested this in a book I wrote about teaching reading in 1978, and since that time (not necessarily because of that book) it has become more common to use prediction to teach reading. Also, high school kids are asked to make predictions in courses that cover current events. Kids predict sporting events or the sex of their in utero sibling.

The idea that kids can make predictions is not a really radical point. My point is that prediction has to be the curriculum, not be ancillary to the curriculum. If we want children to predict well, we need to help them do that. As it stands now, they are on their own. As adults who have not been taught to predict well, they will make poor life decisions, predicting wrongly about how people in their lives (bosses, spouses, children, co-workers, etc.) will behave toward them after they take certain actions, for example. Yes, understanding is improved if one predicts the future actions of characters in a book one is reading—it helps a lot. And, reading is a skill that is very important. But it also helps to understand how to predict daily actions better and how to find out whether you were right and how to explain why you were wrong. Doing this consistently makes you better at predicting something more important than what an author has a character do in a story.

How do we get good at making predictions about the outcome of actions? What outcomes do we need to predict?

Every action we take involves a prediction. When we put one foot in front of the other in an effort to move our bodies forward, we are predicting that this will work, that we won't fall down, and that it won't hurt to do this. Sometimes we do fall or it does hurt. We learn this and compensate next time. This is learning in its most basic form. And obviously, we have been learning about walking since we were

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very small. We keep learning about walking throughout our lives because things change.

Babies predict what will happen when they cry. They don't start out making such predictions. They learn to expect results that they have already experienced. These are scripts, and I have discussed them at length elsewhere.[3] Scripts are acquired naturally as a result of repeated sequences of events. We predict what will happen next because we know the script. Scripts are not normally taught because they are readily acquired from living. But what if you want to teach them? You might want to teach them in a situation where someone's new job is a script and rather than learn that job from repeated experience, there is a desire to jump-start the process by simply teaching the script. How can we do this?

There is also prediction that is not script-based. In other words, there could well be a script but the predictor doesn't know it. How can one learn to predict well if one does not have a script?

And lastly, there is often the need to predict when there couldn't possibly be a script because what needs to be predicted is novel, at least to the predictor. How can the prediction be made? More important, how can someone be taught to predict in that kind of situation?

These, then, are the three aspects of prediction: learning a script; functioning without a script because it isn't known; and predicting when there is no script.

How do we teach these things? Scripts are learned through repetition. No one seeks to explain to a child that since she will be doing something again and again, she will now memorize the steps before she tries it out for the first time. Instead, we take the child through the steps until she has learned them. There is no need to try to teach a child scripts (such as how restaurants function or airplane rides go or school procedure works). We can say some words about these things, of course, but the learning comes from repeated practice no matter what we do.

Teachers (and course designers) often fail to understand about teaching scripts. Talking about what a student will have to do later will not help that student do what he is being asked to do. We don't learn scripts consciously and thus aren't likely to remember what we are consciously told about what to do. We are conscious when we execute a script—we are thinking about what will happen next—but not so much in words as in expectations of next events. We don't talk about

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one foot going in front of the other foot or think about it very much. So if a teacher tries to teach us about it, it is doubtful that the words will help us much. Scripts are practiced. We can prepare for them if that makes people happy. We can tell a child what will happen when he rides in an airplane for the first time, but it isn't so that he can do what he is supposed to do so much as to make him more comfortable and less surprised by noises or procedures that might be upsetting. The only way to really learn a script is to do it again and again.

So what does this tell us about teaching scripts? What if we don't have the time to allow a student to practice? This is, of course, what happens in job-training situations. We tell someone what to do and hope they very quickly will learn how to do it. We can't afford weeks of practice. So how do we teach scripts in that case?

The answer to this depends on the number of mistakes that it is possible to make while executing a script. The real issue in script execution is, after all, not knowing the next steps, but knowing what to do (or what not to do) when the script begins to falter in some way. This means that a teacher (or a course designer) must have one question in mind when thinking about teaching a script: What are the most common (and most important) mistakes that are made by novices when they execute this script?

To teach people to avoid mistakes in a script, or to teach them to get out of difficult situations properly, one must practice those situations. This means that script teaching must focus around errors and that it is the job of a teacher to systematically make sure that everything that could go wrong, does go wrong in any practice situation. Teaching scripts means helping the student form a case base of errors and a case base of how to handle them. Here again, this cannot be taught consciously. Script failures must be taught through practice. The students must build up their own case bases by experiencing the problem and then either think their way out of it, or learn standard solutions as a way out of it by practicing them. So, we can speed up the script-learning process by creating a simulation that has every important mistake built into it waiting for the student to trip up and make that mistake.

When a script isn't known and predictions need to be made, the usual human procedure is to adapt on old script to serve as a temporary new one. Never been on a plane but have been on a train? Never been in a fancy restaurant but have been to a fast-food restaurant?

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Never been to college but have been to high school? These are situations that happen to people. They usually assume that one is like the other. While this assumption may not work out all that well, it is the best a scriptless person can do in the situation.

A teacher, therefore, can take advantage of this human desire to see unknown A as being like known B. People do this all the time. They assume the girl they just met will behave like the last one they went out with. They assume that their teacher will behave the way their last teacher did. They assume that their new car works the way the last one did. They do this with situations as well. What it means is that people predict on the basis of experience and it is the job of the teacher to help students understand which of their prior experiences is most relevant when they are confused. Doing this is not so easy. But it is possible and it is a proper area for a teacher or a course to focus on.

Here is the process. Students need to be asked what to do in a situation that is new to them. Their natural response would be to rely on prior experience. The teacher's job is to make that reliance explicit. To ask students to say which experience they will rely on for help in the new situation and ask why they think that that particular choice will be helpful. To ask them to analyze the differences between the current issue and the prior script and to predict where the prior script might not work. To ask them to think of alternative scripts that might help.

What I have described here is the basic process of indexing cases and matching cases, which is critical to thinking—especially original thinking. No case is really exactly the same as one that came before. We are used to partial matches when we use an old case to help with a new one. What we are not used to is a discussion of why one match was correct and why another was less helpful. Making case matching a conscious process helps us understand something that we normally do without much conscious thought. People need to learn to rely on partial matches and they need to know how to determine which partial match is most likely. I have referred to this process as case-based reasoning in many prior publications.[4] But I have not spoken about how to teach case-based reasoning. This is where post hoc discussion is very important. An example of such a discussion can be found in a book written by Harvard government professors[5] on the failure of President Ford to choose the right cases to reason from in a crisis. Usually this kind of analysis is done as kind of an afterthought. However, teaching people to do it actually is critical to teaching people to predict properly.

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How do we teach prediction when there is no script and there are no seemingly relevant prior cases? In some sense we can't. We can teach people how to go about trying to make predictions. This is actually what science is about. Scientists create theories that make predictions, which they then try to verify with evidence. This process—hypotheses verified by evidence—can be taught in the sense that it is a way of thinking that can be practiced in various venues. It is reasonable to start teaching children to think in this way about the world around them. As for adults, teaching scientific reasoning in the context of corporate training is probably a less than optimal place to start. People in corporations need to be able to reason from evidence and to understand what data would confirm or deny the value of actions they have taken for the benefit of the company. This, of course, is scientific reasoning. But, unfortunately, the people who go into the business world tend to have never practiced scientific reasoning in their educational careers because they weren't interested in science. But they must be interested in predicting well in order to succeed in business.

HOW TO TEACH MODELING

Building a model of a process is very difficult for a child to do and not so easy for an adult to do either. When you teach computer science, you learn this quickly enough. Computer programs are models of processes. People try to write computer programs by creating diagrams that model what happens first and then what happens next, and so on. These models are almost never right the first time.

Programmers learn to debug their programs, which means they continue to try to get their model to be accurate. But most people cannot do this very easily, and it is a very important skill. Knowing how to raise money is important if one wants to start a business, for example. The money-raising process can be understood, but one has to examine it and go through it.

This is just as true of ordering in a restaurant. Children may seem to know about ordering in a restaurant, but they may not understand money or service or having a job exactly and thus may have an erroneous model of the process. Why does the waitress bring food, is a complex question for a 5-year-old, but also an important one. Building models of how and why things work as they do, is significant for children to learn to do.

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The way to do this is to look at processes that children engage in during the course of their daily lives and have them first explain how and why the processes work and then try to improve upon them. They could carefully examine the operations of the school cafeteria, for example. Of course, this has to be done in line with the interests that the children actually have. The idea is building the model, not telling them what models they have to build. Every child has an interest—animals, sports, family, cars, dinosaurs, whatever. Children need to learn to model the processes that interest them in order to better understand them and to make them better. Children will learn about the modeling process from working on a car engine, for example, if they are taught to think about what is going on in a deep way rather than just learning a set of facts about how the car runs. This is true in any area of interest, from medicine to government to science.

Adults have a difficult time with models at work, as citizens, at home, and so on. They don't always know how things really work. To get people to be better at understanding the processes that they engage in daily life, they need to be able to model them. This ability has to be taught and practiced early..

Of course, kids have been building models of actual objects for a long time. Using a kit to build a model airplane is fun but it doesn't teach you much about how planes fly. More detailed models of physical objects are very helpful.

Building a medieval castle, for example, sounds like fun to me, and there are things to be learned from doing this, of course. It is a good activity for little kids, but modeling involves social processes as well. Kids need to understand how the world works, so it isn't the castle itself that is so important but perhaps a model of the society around the castle, and the need for the castle, that would matter in this instance.

HOW TO TEACH EXPERIMENTATION

Everyone experiments all the time. We eat foods that we hope won't make us fat or might make us healthy. We take drugs that are supposed to help us, and maybe they do maybe they don't. We try out relationships that may or may not work. We experiment with jobs, hobbies,

homes, cars, toys, games, lifestyles, behaviors, hairdos. . . . The list is seemingly infinite.

We may not see ourselves as experimenting when we try out something new. We often experiment ineffectively. Learning to experiment in a reasonable way is yet again something that can be done only through experience. But, in this case, there really is an experimental process to be learned. It can be taught early on by finding simple experiments that small children really are interested in doing—they do not all have to do the same ones since it doesn't matter what they do. They can learn to attempt to control the variables and see what happens in a variety of circumstances. This is, again, the scientific method, but the issue is really not teaching science so much as it is teaching a scientific approach to gathering useful knowledge. What constitutes evidence and how to draw conclusions are the kinds of things that a teacher can help with. Here again, a case base is acquired and relied on throughout this process. The discussion of findings so that they can be mentally indexed is very important part of the process.

But how do we find out what is true? Ask any 5-year-old this question and the answer is not very likely to be, We run an experiment. Ask mommy, is more likely or, Ask the teacher, if the kid is in school.

But, testing hypotheses is a critical part of learning to think. Of course, one has to have a hypothesis first. Children are rarely asked for their hypotheses about things. This is not exactly odd because although children do have them, it is a weird kind of discussion to have with a 5-year-old. Nevertheless, it is important to do. Teaching children to form and test hypotheses is as simple as asking them to do it. But, here again, asking them to do it must be done within the context of something they really care about. There have been many attempts over the course of educational history to teach kids science by having them run experiments; sometimes they are asked simply to replicate old experiments and sometimes they are asked to try new ideas out and figure things out for themselves. While the latter is most certainly preferable, these experiments tend to be about testing water quality, or nutrients in the soil, subjects that are not exactly on the mind of a 5-year-old.

What is on the mind of a 5-year-old? He might be wondering about how to deal with his baby sister. Or he might be wondering

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how best to throw a rock in order to hit the cat. For many of these things, hypotheses can be formed, discussions about what makes a good hypothesis can be had, and ideas for testing out hypotheses can be sought. Maybe these would just be thought experiments (as in the case of hitting the cat), but thought experiments are important also. Knowing what would confirm or deny a hypothesis is important. Finding out what kids want to get better at is part of the issue here. If they want to learn to hit a baseball, having a theory about what makes a good swing and what makes a bad one may matter to them. The subject matter doesn't matter at all really, just the thinking and the experimentation.

This suggests that the real way to teach experimentation and the other subjects we have discussed here is to group kids not by age but by interests. So, if a child wants to think about dogs all day, group him with a set of other dog lovers and start coming up with hypotheses about dogs' behavior, needs, commands that they might learn, training, breeding, and so on. It just doesn't matter what the subject is at this stage.

Suggestions for kids' science experiments are everywhere. Here is a typical one:

> Gravity
>
> The Earth tries to pull everything down toward its center. This pull is called the force of gravity (the invisible force). When you lift things up, you have to pull against gravity. If you drop a pencil, gravity pulls it to Earth. If you rest its midpoint on your finger, gravity will pull down equally on both sides of the pencil and it will balance in the air.

Here is another:

> Sound and Noise
>
> Have one person fill each of the plastic eggs with a different item. Put some rice in one, some dried beans in another, and so on. Keep track of what you put in each egg by writing numbers on the eggs. Have a different person try to see if he can figure out

what is inside each egg by shaking and listening to the sound generated. After he takes a first guess, show him the list of what items are in each egg and have him guess again. See if he changes his mind about some of the previous guesses. Now open the eggs and see how close the guesses were to what was actually inside each egg.

Now, let's make a musical instrument called a kazoo. Cut a small square of wax paper about 1 inch larger than the end of the cardboard tube. After doing that, wrap the wax paper over one of the ends of the tube and put a rubber band over the paper to hold it in place. Now, put the open end of your kazoo up to your mouth and hum a tune into it. Notice how the kazoo buzzes and vibrates to amplify (make louder) the sound of your voice.

Of course, this is not exactly what I have in mind when I suggest focusing school on experimentation. Say the word *experiment* and the word *science* usually follows right away. This is unfortunate because most kids won't become scientists any time soon. Also, most kids already know what they are being asked to "experiment" about. They know the pencil falls and they know you can make noise by blowing through things. They may not understand how all this works, but they won't understand much more after doing these so-called "experiments."

Experiments in the larger sense are about attempts to find out what is true about things you are uncertain about. The issue is how to do that when you are wondering about something. To do this we need to constantly deal with what kids are worrying about and ask them to determine how they can find out what is true. This is experimentation that can be helped by teachers. It needs to be individually focused, however. You can't have a class worry collectively about any one thing. Each kid has his own concerns.

HOW TO TEACH EVALUATION

For an issue that is so important to so many people, it is astonishing how difficult this seems to be. Just say no to drugs campaigns don't work and people wonder why. Abstinence campaigns don't work and people wonder why. It is not all that mysterious. You can't teach

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evaluation verbally. Since children naturally copy their parents, it is not that complicated to figure out where children acquire their initial values. And, since values are not typically stated (my father never said liquor at 5 p.m. is a good thing), it certainly isn't through lectures that we learn values. I learned to drink at 5 p.m. from my father. He wasn't trying to teach me that. I learned to gamble from my father. He wasn't trying to teach me that either. I learned to be argumentative from my father. He wasn't trying to teach that. I did not learn algebra from my father. That, he was trying to teach me.

My son wanted to grow up and sip Pepsi. He told me this constantly as he was growing up. It did not matter that I hadn't drunk Pepsi for 10 years at the point when he was saying that. He was impressed that I had done this when he was 3 and he was frustrated that I didn't allow him to drink it. Presto, another family value is learned.

Children learn the family values that their family actually has. Teenage mothers who warn against getting pregnant at a young age may say that in words, but their actions say that their kid is alive and well and it all worked out.

So, it follows that we don't have to consciously teach values because we teach them without saying a word. Values are held subconsciously and learned subconsciously. We can only hope that we have set a good example. That having been said, there will still be those who ask how we can teach values. You can't expect that "you can't," will work as an answer.

I mentioned in Chapter 3 that there are lots of things that you can't teach. I mentioned honesty as an example. Honesty is, of course, a value. Now let's ask whether you can teach people to be more honest than they are naturally inclined to be. The answer is that to do this, you have to turn a subconscious process into a conscious one. You would need to provide case after case and experience after experience to a student that all led to the conclusion that honesty simply works out better in the long run. This is, of course, what abstinence and *say no to drugs* campaigns endeavor to do. They want to argue kids into believing that things they think are fun, are bad. But how can we make that argument? The argument we can make is that these things aren't as much fun as you think, so try them and see for yourself—but that kind of ruins the basic premise about not doing them in the first place. So, in principle there is no way to argue kids into not doing what looks like fun to them and what doesn't seem to have

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hurt anyone very much. The idea of showing pain is big in values campaigns. Campaigns against drunk driving like to show students dead drivers and awful car crashes. But they miss the real point. Have the students seen their parents drink and drive or friends drink and drive? Are they dead? If not, these campaigns will have little impact since values are subconsciously held.

There is a way to teach these things but it isn't easy. Imagine that you wanted to teach teenagers not to drive drunk. You could create a simulation of drunkenness that asked students to drive drunk while not being able to hold their heads steady, blacking out from time to time, and seeing very badly. In other words, instilling a new emotion into the mix can alter values. Make people afraid of something they want to do and that fear will manifest itself when it is time to do it. Emotions can be induced into subconscious processes and decision-making through experience. Emotions can change values.

There is a sense in which appreciation cannot be taught. You like it or you don't. I have two grandsons. The 5-year-old (my daughter's child) has announced that he doesn't want to have anything to do with a ball. The 3-year-old (my son's child) goes wild with excitement when he sees ballgames being played and responds excitedly when balls are given to him. What is the difference and how did this happen? The difference is obvious: One appreciates the art of it and one doesn't. How this happened is less clear, but the parenting is very different with respect to balls in each house. There are other, biological differences as well. The 3-year-old has much taller parents and is already the same size as the 5-year-old. He is much more physical as well.

So, the question is, Could we teach the 5-year-old to love balls and ballgames, and could we teach the 3-year-old to hate balls and ballgames? The answer to this is obvious. We could do this. It might be hard but people are, unfortunately, quite good at negative reinforcement, so it is possible to make people change their attitudes by using it as a method.

Is there a way to teach the positive? Can we get someone to appreciate a work of art who does not respond immediately to works of art? Can we get someone to appreciate classical music who does not have any interest in it?

This is, of course, what many art history or music appreciation courses endeavor to do. Their methodology is always the same:

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repeated exposure and analysis. It always involves a lot of talking. And therein lies the problem. Since appreciation and enjoyment are subconscious processes, it stands to reason that these processes are best addressed by a methodology that is less conscious. Telling me why I should like something is not likely to do much more than teach me how to talk about something as if I liked it. I can point out the finer points of baseball to you, but if you don't care, I won't be able to get you to go to the next baseball game.

On the other hand, of course, you certainly won't like baseball if you have never seen it played. Exposure is the key to teaching subconscious processes. Add to that an enjoyable atmosphere surrounding the experience, especially if it is early on in one's life, associated with the artistry you want to teach, and it is likely that the learner will learn to like whatever he is being exposed to. So, evaluation, which starts out as a subconscious process, must be taught by enabling copying and repeated practice, but cannot easily be taught verbally.

HOW TO TEACH DIAGNOSIS

Diagnosis is the same and it is different. Many different people do diagnosis under many different circumstances. But, the process is always the same. So it seems normal to ask why an expert in doing diagnosis in one area cannot do diagnosis nearly as well in another area of knowledge. Why can't a doctor fix his own car? Why can't a detective figure out why a business is failing? It is all diagnosis after all.

Diagnosis is best taught early on but it can be taught at any age. In the end, it is just about knowing what counts as evidence and how to create and rule out hypotheses. The general process of gathering evidence and testing hypotheses is the same no matter what you are doing. This is true in principle, of course, not in actual fact. In reality, doctors cannot rule out hypotheses by tests that might harm the patient. Businesspeople cannot rule out hypotheses by running control businesses that may lose money while others make money. Detectives cannot spoil a crime scene by altering the evidence. Mechanics cannot try something that might make things worse. Investors cannot control world events that might make a seemingly correct hypothesis still not work out all that well.

To teach diagnosis, simple problems can be worked on that lead to more complex problems. What is being taught, apart from the process

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itself, is the knowledge that underlies the hypothesis and understanding what constitutes evidence and the consequences of evidence. This knowledge is very domain specific and is the reason that doctors don't necessarily make good car mechanics, and vice versa. This knowledge can be acquired only through practice and experience and can be acquired only consciously. Diagnosis is thus a conscious process that is very knowledge dependent. There is no seat-of-the-pants diagnosis, namely, diagnosis that is seemingly subconscious, although it may well seem that way. Having an intuition is usually just the result of having a great deal of experience, so much so that hypotheses just jump out at you because similar cases are so easily recognizable to an expert. Someone who is good at diagnosis would be good at diagnosis in any domain of knowledge if they knew how to gather and interpret evidence in that domain.

Diagnosis is clearly very difficult to learn. Most people are rather bad at it outside of their own areas of interest. Even inside their knowledge base they can be sloppy in the reasoning and leap to wrong conclusions. This is true of all analytic skills. It is possible to never learn to do them well.

HOW TO TEACH PLANNING

Planning is extremely important and typical of an analytic cognitive process; it is something that some people simply never learn to do well. Teaching planning must be focused around the assembly of a case base. Planning is taught in many domains of knowledge and is almost always taught wrong. The classic error is to teach the theory of planning, means–ends analysis, a theory of urban planning, spatial planning, military planning, and logic-based artificial intelligence planning. Such courses all make the same mistake. Course designers think people use theories when, in fact, when people plan, they simply try to adapt old plans that have worked before to new situations. Often people don't plan at all. They simply assume that a set of actions they intend to perform will work to achieve an expected goal.

Teaching planning is therefore a tedious process that is best begun in childhood. It involves making plans, seeing how they play out, and performing an analysis of what went wrong. Often people are not even aware that they have made a plan, and are simply frustrated when things go wrong. They almost never perform an after-action

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review (as the military calls the analysis process that takes place after a plan has been implemented).

Teaching planning means teaching about goals, how they typically are achieved, what obstacles might be encountered, and how to deal with them. The principles of planning are the same no matter what domain you are in, so children can learn to plan birthday parties, hikes, class trips, how to deal with their problems, how to treat their little sister, how to get along with their parents, and so on. This process can be learned by copying, seeing how others deal with these things, adapting a plan that has worked before, and so on. A teacher who tries to teach planning from first principles is teaching something that is easily forgotten as well as teaching a process that doesn't occur that much in real life. Chefs adapt old recipes or parts of old recipes. Generals adapt old battle plans or parts of old battle plans. Computer programmers use code that has worked before. Planning without a prior plan in mind really is quite unusual and generally not a good idea.

Planning, like diagnosis, should be a basic part of all curricula in school at all ages. People make plans all the time. They plan their lunch, they plan their day, they plan their trips, they plan their errands, and, of course, they plan their lives. It is astonishing that we don't teach planning all the time in every aspect of life. But we don't because this doesn't seem very academic. Since it is not explicitly taught to children, it is reasonable to ask how we might best teach planning to adults. Corporations want to teach financial planning, resource planning, supply chain planning, creating business plans, creating marketing plans, and so on. Planning is, in fact, one of the major preoccupations of business, as well it should be. So, how do we teach it?

The problem here is that planning really works in only one way. It is relies on a case base. We plan by adapting old plans. That's how we do it. We store old plans and we retrieve them when we need them again; we change them so they apply to the new situation or change them so that this time they will work out when they failed before. But we always start with an old plan. New planners, those we are trying to teach how to plan, cannot help but do this, even if they do not have a relevant old plan to work from. They simply will choose the best plan they have, even though it might not be all that germane to the current situation. Proverbs—for example, to a man with a hammer, everything is a nail—don't come from nowhere.

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Thus, when we teach planning, there is either a lot to undo, or we must start from the beginning. We can try to explain why each and every old plan is not really helpful in a new situation, or we can teach a series of plans that are relevant. In other words, if you are trying to teach people to write a business plan, you need to start with a lemonade stand and work up. If you are trying to teach financial planning, you need to start with a child's allowance and work up. If you want to teach battle planning, try a tug of war first. This is what should have occurred in childhood. If it didn't, it needs to be restarted that way for adults. We need to use, again and again, plans in different situations that are simple and begin to analyze why they fail. (And these plans must fail, at least in simulation, or no real learning will occur.)

Planning is very difficult. It must start simple and be practiced simply for a while or it never becomes second nature. Plans must fail, at least in simulation, because analysis of what went wrong is a critical part of planning. If you aren't analyzing what went wrong, you aren't learning to plan. Your case base will not end up having been indexed well enough to enable you to pick and choose appropriate plans in the future.

HOW TO TEACH CAUSATION

At the root of diagnosis and planning is causation. Detecting cause is an essential part of diagnosis, and anticipating cause is an important aspect of planning. Causation must be understood in order to do many things in this world. One needs to know what causes what. Science courses in school attempt to teach causation by having students memorize F = ma, or having them imitate chemistry experiments, or having them dissect a frog. While there is nothing wrong with any of that in principle, it really doesn't teach causation in a way that is particularly useful to a functioning adult.

While diagnosis and planning may not be recognized as critical skills by schools, causation is, although not under that word. Causation is understood as being what science is all about, and when schools endeavor to teach science, they are in fact trying to teach causation. This is true for social science as well. History is about causation, as is psychology. The fact that these subjects are not talked about in this way indicates something important about them.

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Subject- based education makes the academic disciplines the center of what needs to be learned, when there is really something else at the base of learning. All human learning and all scientific inquiry is about causation; attempts to determine what causes what, and why, are what it means to be a scientist or an academic. Theories of causation, and tests to see whether those theories are true, are what it means to be a scientist.

The problem is that telling students that causation is part of science makes them think about physics formulas and fact memorization when the real issue in teaching causation is how to determine what causes what, rather than how to memorize what causes what. There are, of course, facts about causation that are worth knowing. It is nice to know that if you let go of something, it may fall, but it is not necessary to know that gravity is the issue in this. The world went on quite well for millions of years before Newton. People certainly understood before Newton that things would fall when you let go of them and nothing else was supporting them. Scientific explanations of causation are nice for scientists but not necessary for everyday humans. What everyday people need to know is how to determine what causes what in areas of their own interest. They can hear you tell them about causation—the stock market always goes down when a Democrat is elected president—but they need to be able to decide whether what you said is true and whether it is the election that causes the decline or something else.

Understanding about causation is much more a function of being able to figure out what caused what in any given instance than it is the memorization of facts about science. Of course, with known cases, as we have seen, being able to extrapolate from one case to another is a good way of determining what is likely to happen. There is no harm in knowing prior cases and great value in being able to use them. But, as always, cases are better learned from one's own experience than from being told about them.

Teaching causation, therefore, means teaching the process of determining what happened in any given situation. Since there is a great deal to learn about any domain of inquiry in order to determine causation, the main issue is how to know what the facts are and how to reason from them. This means that, yet again, it is the domain of knowledge that needs to be learned, and this entails constant practice in that domain. And, the methodology of determining

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causation needs to be learned. This, too, can depend on the particular domain of inquiry. Reasoning from all this takes practice as well. Determining cause is a critical cognitive process that underlies nearly all thinking.

HOW TO TEACH JUDGMENT

How do we get good at making a judgment? Judgments are a kind of prediction, of course. When a judge sentences a criminal, he is, in a sense, making a prediction about what will happen in the rest of this person's life. But he also is making decision that is no way a prediction, but simply serves as punishment. Similarly, when we decide that a certain restaurant is our favorite, we are predicting something about how much we will enjoy future experiences, but we also are making a decision that may or may not matter to others, that is, a recommendation. Recommendations are also predictions, but they have a different feel. When a boss decides whom to promote, he is predicting something about future behavior but, again, the prediction isn't the key point. A judgment is a decision that has some import.

Nevertheless, as different as judgments and predictions may or may not be, the process of teaching them is identical. Good judgment is learned by making judgments and analyzing the results or truth of those judgments as more information becomes available. After a judgment is made it too becomes one of one's cases and stories. Cases about judgment can be learned only by making simple judgments and getting smarter about the process over time on the basis of experience.

Judgments can be made in two ways that matter here. Either someone can decide to do one thing versus another thing based on ethical, moral, avaricious, or emotional grounds, or for many other reasons. Judgments aren't so different from decisions in this aspect. Teaching someone to make a judgment of this sort, between A and B, can be done by putting students in situations in which such judgments need to be made and then going over with them how they decided and what they may have left out of their thinking.

A different kind of judgment is made when one judges the behavior of others. Judges do this, of course, as do compliance officers in companies, and teachers with respect to student mistakes.

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Children normally make judgments about the behavior of their parents and friends as well. In all these cases, judgment is best taught by having a student watch the behavior of others, keeping himself out of the issue and seeing what factors motivated and determined the behavior of the actors. It is a lot easier to teach proper behavior when it is not one's own behavior that is being judged. One can learn to act by judging how others act.

So, children make judgments all the time. Typically those judgments reflect the values that they have been taught at home. Children decide what is good and what is bad mostly based on what they have been told. No child discovers for himself that George Washington was an admirable man. No child decides on his own that the United States is the best country in the world. These things are taught by parents and by schools. School, to the extent that it serves as a place of indoctrination, has always succeeded at producing citizens who believe what they are taught to believe at a young age. There obviously is a great deal of sentiment for keeping indoctrination as a key part of education, but teaching judgment means allowing children to come to conclusions based on their own experience and not merely what they were told.

Learning to make judgments is a process of deciding for oneself what is true, which is, of course, not so easy. This should be the role of school but it usually isn't. School wants to teach us the truth when, in fact, truth is best discovered, again, from experience.

How would one discover the "best country in the world," if that is a meaningful idea, or whether George Washington was all he was cracked up to be? Obviously, travel helps teach one about countries. Kids can learn about countries by simulated travel in the modern era. But the point wouldn't be so much to teach them that they make good cheese in France, which is the kind of thing school does today, but to think about what makes France different from the United States. Similarly, we can read and learn some facts about George Washington, and these are indeed taught to children in primary school. I do not believe that children are equipped at a young age to determine for themselves whether Washington was a good man. Perhaps that would be a worthwhile assignment in high school, as long as students were interested in the question and were allowed to come to any conclusion that they could reasonably defend. But children of 5 or 6 can understand what

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a hero is and what leadership is, and they can determine for themselves who they know or have seen who is good at both. Again, real experiences and discussions are how one learns to think about this, but it must be done in an environment of possible truths, not predetermined truths. One doesn't create a nation of people who can think by telling them what they should think. Kids know who is the leader among them. They should learn to discuss what it is about their leader that makes them want to follow. This is difficult discussion to have with a 6-year-old, but it gets easier with age.

Once again, asking kids to make judgments isn't that unusual. Here is a remark from a parenting book that I happened upon:

> When adults praise their kids for smart judgments, the kids glow. But here's the clincher: kids earn more and more freedom and independence when parents trust their judgments more and more.[6]

The issue here is, yet again, not whether kids make judgments, but whether they are taught, as a central part of what they study, how to make judgments.

The cognitive processes depend on reasoning from evidence in a way that makes sense. This is not something people are naturally good at. They often exhibit faulty reasoning. Practicing reasoning means practicing within particular domains of knowledge. Reasoning is the same process no matter what you are reasoning about, but we don't reason about nothing. Learning the actual facts is important, but it is the idea that this is important that has sent the school systems on the wrong path. Academics study the facts, as well they should, but they also teach the facts, which is a grievous error. How to determine the facts and how to determine their effects on a situation is what the processes of diagnosis, planning, and causation are all about.

HOW TO TEACH INFLUENCE

This is yet another childhood skill. Children learn how to influence their parents and their siblings and their friends very early on. Of course, they may not learn these things in a good way. They might learn that temper tantrums or bullying works very well.

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Teaching people how to influence people involves putting them in situations where it is possible to influence people and seeing how it goes. There is nothing to learn exactly. We try behaviors and see what works. What works for one person may not work for another. One way or another, we learn how to get what we want, or we learn to hang out with people who will respond to our needs. This is basically a subconscious process. We are so busy working on this at a very young age that we may not have any idea what it is we know or how to improve what we do. Of course, there is a conscious part as well. Someone can tell us that we will catch more flies with honey than with vinegar, and we can, if we think about it, adjust our behavior. But aphorisms about what works and what doesn't work aren't always correct and are highly idiosyncratic. Although there are books about how to win friends and influence people, the reality is that, apart from adopting a phony personality, people are who they are, more or less.

But this does not mean they can't be taught what works. It usually does mean that they can be taught what works as a result of their own experience. And, they can be taught what doesn't work as a result of their own experience. But this isn't at all easy. If it were, psychiatrists would not be able to make a living. You can tell a person to change his behavior, you can even tell him exactly what to do when, but he is likely not going to be able to do what you say.

The way influence is taught currently is probably the way it has to be taught, then, by use of mentors who look at your behavior and talk you through why you do what you do. This same mentoring method can be used in corporate settings. Simulations may not be so effective because while we may know and be able to say the right answer, this doesn't mean that we can execute the desired behavior in reality.

HOW TO TEACH TEAMWORK

Teamwork is learned by working in teams. It is a mixed process because, here again, we behave in ways that are not so conscious but we can make conscious changes. Leaders learn to manage teams by thinking about what works and what doesn't. Quarterbacks must learn to manage their teammates. If they don't, it really doesn't matter how well they can throw the ball. Team members have to want to work hard for the leader, and the leader has to know how to motivate each team member. People are different so what works for one

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may not work for another. A leader learns to figure out who is who and what works for each member of the team. The conscious part of this is about learning who needs what from the leader in order for the leader to get the most out of each individual so that the team's goals are achieved. The subconscious part is about interacting with others, which is rarely conscious behavior. We get smarter through experience. If our team wins because we functioned well as a team, we learn to repeat the behaviors that worked. If we win because our team was simply much bigger than the other team, then we probably won't learn much about teamwork.

Teamwork can be taught only by examining how a team functions and attempting to make conscious the subconscious behavior that is not working. Thinking about what we have done that may not have been helpful to the team, and making sure that team members' goals are aligned, is pretty much the only way we can learn to improve our behavior.

HOW TO TEACH NEGOTIATION

My daughter was a little over 2 when we moved back to the United States from Switzerland. The enormity of U.S. toy stores overwhelmed her and it seemed that she wound up crying every time we entered one. She wanted everything. So I had what I thought was a clever idea. I told her that she could have two toys of her choice but that if she cried she couldn't get any at all. We talked about it and it was clear that she had understood what I said. She ran around the toy store and ended up selecting three toys. I told her one would have to go back—that our agreement was two. She started crying hysterically. I then said she had to put them all back as she had violated our no crying agreement. All of sudden, she sucked up all her tears and said in a breathless voice: I'm not crying now. I said that we would compromise on one toy.

That was possibly her first lesson in negotiating. I say possibly because kids and parents negotiate all the time. She and I are still negotiating. Now it is about when she will come to visit or when she will send her son down to visit or a range of other family issues.

Negotiation is so important that it is nearly absurd to ask how we teach negotiation. We can learn it by copying, of course, which I did when I watched my father get a good price on a used car I was buying that I was ready to pay much more for. But really we negotiate with

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our wives and children and friends and co-workers all the time.

It is possible to teach negotiation, of course. My team once built a course on negotiation, working with a Harvard Law professor[7] who taught negotiation. The course worked by having people negotiate. The situations were artificial so there is some question as to how valuable lessons can be learned from negotiating when nothing important (except ego) depends on it. What I found most interesting about that course were the stories that the expert told from his life as a professional negotiator. I can't say that I was ever able to personally make use of the lessons that those stories taught, but other people's experiences are interesting to think about. In the end, what we really know about negotiation is what has worked well for us in the course of our lives when we were negotiating. Coaching can help, of course, which implies that the best way to teach negotiation would be with a mentor watching you do it for real and offering tips. Psychologists perform this service in couples counseling, and presumably real estate agents perform this service for homebuyers and sellers. Just-in-time advice is always helpful.

HOW TO TEACH DESCRIBING

There is a famous quote: "I apologize that this letter is so long—I lacked the time to make it short."8 As long as people have been talking, they have had to learn to talk well. When they learned to write, they had to learn to write well. Communication is a very big part of living in a society and those who communicate well gain all kinds of advantages. It is difficult to attain public office without speaking well, or to become an important academic without writing well, or to make sales or convince anyone of anything without making your case well.

This takes practice and coaching, and there is no substitute for either. One also has to have something to say, so this means one has to have had experiences to talk and write about. Further, it helps if one is writing about something that one is passionate about. Asking kids to write about their summer vacations doesn't necessarily make them into good writers. Asking kids to give speeches about George Washington fails for reasons of lack of passion. People need to learn to describe well what is most important to them. And, they must be doing this

in every task they undertake. They must talk about and write about what they do until the description process becomes second nature to them. So, describing cannot be taught in and of itself. It must be part and parcel of other events students undertake. Writing classes make no sense, therefore. They exist because of the subject-based divisions in school. Writing and speaking must be part of everything that is going on.

SUMMARY

Proficiency at all the cognitive processes depends on discovery and being able to extrapolate from one's experience about what has been discovered. These processes depend strongly on prior cases, and prior cases are best learned slowly in childhood. They also depend on an analysis of those cases, which is best done with help from a teacher. Discussion, reflection, and analysis of prior cases make one better able to deal with new cases. New cases must be compared with old ones in a way that helps one reason better from them. This comparison is the basis of teaching analytic cognitive processes. Learning cognitive processes means having prior experiences with events that are similar to current events and being able to extrapolate from them. When we go to a doctor, we want one who has seen our problem, and described it to others, many times before. Only then can we detect the nuances of difference that will determine an effective course of action.

Teaching cognitive processes means providing students with experiences, hopefully each one more complex than the one before, and helping students discuss those experiences and compare one with another. Knowledge is experience, but it is experience that has been analyzed so that it can be retrieved again just in time as needed. This will happen only if we have thought about what we have experienced.

A teacher's job, therefore, is to help provide the experiences and to help the student reflect upon the significance of those experiences. Good parents do this naturally. Good teachers would do it naturally as well, if they were allowed to do so. Helping someone see the world in a new way is pretty much what good teaching is all about.

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CHAPTER 10

Defining Intelligence

> All our knowledge begins with the senses, proceeds then to the understanding, and ends with reason. There is nothing higher than reason.
>
> —Immanuel Kant

What is school for? A common answer is, to make people more knowledgeable. Another is, to socialize them and prepare them for living with others. Another is, to make them ready for work. (This last one seems almost laughable because it is clearly untrue in the modern world, but people do seem to still believe it.) Another is, to prepare them for more school. (People take this one very seriously.) My answer is: School should make people more intelligent.

Really? Can we make people more intelligent? There are those who would argue, and I am quite sure they are right, that intelligence is genetic: It can't be altered by school, one way or the other.

Nevertheless, I think that school should make students more intelligent.

How can I believe both things?

It all depends on how you define intelligence. Let's think about intelligence the way ordinary people define it when they say that someone seems dumb or that someone seems to be very smart. There is a lot to be learned by considering seriously the folk view of intelligence as opposed to the classical school/testing view.

In the 2007 Miss Teen USA contest, Miss South Carolina responded to this question:

> "Recent polls have shown that a fifth of Americans can't locate the United States on a world map. Why do you think this is?"

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In this way:

> "I personally believe, that U.S. Americans, are unable to do so, because uh, some, people out there, in our nation don't have maps, and uh . . . I believe that our education like such as in South Africa, and the Iraq, everywhere like such as . . . and, I believe they should uh, our education over here, in the U.S. should help the U.S. or should help South Africa, and should help the Iraq and Asian countries so we will be able to build up our future, for us."

Millions of Americans upon hearing this interview, which was replayed on every television outlet, thought this response was both very funny and an indication of how stupid Miss South Carolina was. Most adults feel that they know what intelligence looks like and that they know what stupidity looks like. Everyone agreed about the absurdity of this response. It was, after all, incoherent, and this was obvious to anybody.

Miss South Carolina was given another chance to answer the question on the *Today Show* on NBC, some days later. Here is a description of what happened from the MSNBC website:

> She explained Tuesday that she was so overwhelmed by the moment she barely heard any of the question.
>
> "Everything did come at me at once," she said. "And I made a mistake—everybody makes a mistake—I'm human. Right when the question was asked of me, I was in shock . . . I would love to re-answer that question."
>
> Curry [of the Today show] obliged, reading the entire question as it had been asked during the pageant. This time, Upton [Miss South Carolina] was ready.
>
> "Personally, my friends and I, we know exactly where the United States is on a map," she said. "I don't know anyone else who doesn't. If the statistics are correct, I believe there should be more emphasis on geography in our education so people will learn how to read maps better."
>
> She came back later in the show to deliver a flawless explanation of lunar eclipses.
>
> Held up on the Internet as the quintessential dumb blonde, Upton was an honor student in high school.

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The premise here is that she isn't actually stupid but was just confused by the moment and that she is intelligent because she is on the honor roll at school, can explain lunar eclipses, and could answer the original question coherently, given sufficient time to do it (and maybe with some help).

The media, for reasons of their own, decided to make this a feel-good story and get people to feel better about Miss South Carolina. She has continued to work in the media in various ways since the original interview.

I am not concerned here with Miss South Carolina's intelligence, but with what it means to be seen as being intelligent. My premise is that while native intelligence is certainly genetic, the perception of intelligence and what might be described as intelligent behavior can be altered. (Perhaps this seems as incoherent a position as Miss South Carolina's position on education.)

The curious thing about her second response is that it doesn't answer the original question at all. The question was about why she thought Americans were ignorant about geography, and she responded by saying that they weren't but that maybe there should be more education about reading maps, which in no way addresses the question about why Americans can't locate the United States on a map.

So her answer is still awful even after she was given time to work on it. It is simply unintelligent.

The question is: Could we make Miss South Carolina more intelligent somehow? Clearly school hasn't done it. (She was an honor student!) How might one do it?

Of course, we really aren't concerned with Miss South Carolina in particular. Consider the following interviews conducted at a Sarah Palin book signing in November 2009, in Columbus, Ohio. The interviewees were all in line waiting to meet Sarah Palin and to buy her book:

Interviewer: Tell us why you are here today.
Older woman: She stands for what America is.
Interviewer: What do you mean by that?
Older woman: Freedom, liberty, right to speak . . .
Interviewer: What are the particular issues you would like to see her bring to office?
Older woman: Oh, geez, help me out here, guys.
Second woman: Fairness. Realness.

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So we have a Palin supporter who has no idea why she supports Palin and asks for help. The "helper" says fairness and realness, which apart from being ungrammatical is also nonsense. Neither supporter seems to know much about Palin, but they are eager to meet her and they believe in her. (This is not a comment about Sarah Palin, at least not by me. Supporters of most political candidates have difficulty explaining why they like whomever they like. Or, alternatively, they can explain it and those explanations leave you wondering.)

I will never forget attending a JFK campaign visit to Brooklyn when I was 14. The woman next to me exclaimed that *she would vote for JFK because he was so gorgeous*. I was appalled. I knew the woman. She was not a deep thinker, but, really–people vote for someone because of their looks? Yes, people do, political scientists have pointed this out consistently.

Is this intelligent behavior? Of course not.

The question is: Can we do something about it? Is this an aspect of intelligence that is not genetic and that therefore can be changed?

If you know and believe that what you have just said makes no sense, you can try to learn how to make sense. Do these people know that are they are not making sense? Here is another person from that same Columbus event:

Young man in Ohio State jacket: She's the epitome of conservativeness and I'm telling you if the Republican Party doesn't back her, it doesn't matter because she's going to get the presidency.

Interviewer: What would you like to see her do with foreign policy?

Young man in Ohio State jacket: To be honest with you I don't know anything about her foreign policy.

Interviewer: What are some of the problems you have with cap and trade proposed by Democrats in office?

Young man in Ohio State jacket: You want to give away your own money, it's fine, but don't tell me to give away my money. It's socialism.

Young man in Ohio State jacket: The state that she did govern was right across the street from Russia. You know so I'm not saying that she ever had to deal with Russia but I'm sure she

> had boundary issues she had to deal with. We have boundary issues right now with Mexico now.

This Palin supporter is also incoherent but incoherent in a different way. He doesn't know much, and he knows he doesn't know much. But he has beliefs and he believes in his beliefs. He has beliefs about socialism (that it is bad, and that President Obama thinks it is good) that are based on no real knowledge. He has beliefs about foreign policy and what it means to have foreign policy experience that are based on nonsense. And he has made up some beliefs about "boundaries."

What does this tell us? It tells us that at some point, maybe not now because he is too set in his own beliefs, someone could have taught him about socialism or "boundaries" or what it means to have foreign policy experience. But it should be clear that this is exactly the kind of education that we have been trying to do in our schools forever. You can talk about socialism in school, but that doesn't mean that your average person learns much from what is said there.

There is a wonderful movie called *Ferris Bueller's Day Off* that reveals a great deal about education. I often use a clip from that movie, when I give speeches on education or training, wherein the teacher drones on about the Smoot Hawley tariff and George Bush's view of Reagan's voodoo economics (as stated in the 1980 primaries) while the students doze off. At a different point in the same movie, the lead character blows off a European history test, saying:

> It's on European socialism. I mean, really! What's the point? I'm not European . . . I don't plan on being European. So who gives a crap if they're socialists? They could be fascist anarchists. . . . It still wouldn't change the fact that I don't own a car!

They do teach about socialism in school, but no one is listening. If we can't produce reasonably intelligent voters in our schools, then we aren't doing much.

Here is another Columbus Palin fan:

> Interviewer: What do you think she would bring in terms of policy in office?

Young woman: Good judgment.
Interviewer: Any specifics?
Young woman: I think she would control the out-of-control spending.
Young woman: I think she would acknowledge the system of government in the United States rather than focus on the administration of czars.
Interviewer: Yeah, and what is your problem with czars?
Young woman: I'm an American and we don't have czars in America.

Here again, we have a juxtaposition of beliefs based on no actual evidence or reality. I don't know what this woman has heard about czars, but whatever it is, it misses the point. Could we teach this woman to be on point—to say meaningful things based on actual evidence? Not now, I fear, but it is my contention that we could have done so at some point in her life. School has failed her and she seems, to anyone listening, to be stupid. But she is not really stupid; she is just talking stupidly because she hasn't been challenged to behave in any other way.

Here is another:

Middle-aged woman: Governor of Alaska is the only one that has top security.
Interviewer: What does that mean?
Middle-aged woman: It means that if anything happens to our borders on that side, she's the first one in line for attack for there.

This person not only makes no sense, but she can't speak in an understandable way. Is that genetic? I doubt it. Intelligence, as it is popularly defined, includes the ability to produce coherent speech, which certainly can be enhanced through teaching, but apparently not by our schools as they currently exist.

Here is one last interview from that event:

Interviewer: What do you think of foreign policy—what would you like to see her do with foreign policy?
Man with cap: I don't know, I really don't have an answer—I don't know her well enough. I don't know what she knows or doesn't know. I don't know some stuff of what people ask me.

Interviewer: Some of the viewers think there's not enough oil.
Man with cap: We got us self-sufficient energy gas oil right under our feet. Why aren't we exploring more for it and drilling here instead of sending all that money overseas and exporting, I mean importing, all that oil back to America?
Interviewer: Do you hope she runs for president in 2012?
Man with cap: Yes, I do.
Interviewer: You will support her?
Man with cap: I sure would.
Interviewer: Do you think there will be any problems supporting her, knowing that you're unfamiliar with her foreign policy issues?
Man with cap: That wouldn't keep me from not voting for her.

There is a difference between ignorance and stupidity, just as there is a difference between knowledge and intelligence. It is a good guess that the "man with cap" above is both stupid and ignorant. The question is why?

One reason is that it is now acceptable in our society to be ignorant and stupid. Here is some of the famous ABC/Charles Gibson interview with Sarah Palin during the 2008 presidential campaign:

Gibson: Do you agree with the Bush doctrine?
Palin: In what respect, Charlie?
Gibson: The Bush—well, what do you—what do you interpret it to be?
Palin: His worldview.
Gibson: No, the Bush doctrine, enunciated September 2002, before the Iraq war.
Palin: I believe that what President Bush has attempted to do is rid this world of Islamic extremism, terrorists who are hellbent on destroying our nation. There have been blunders along the way, though. There have been mistakes made. And with new leadership, and that's the beauty of American elections, of course, and democracy, is with new leadership comes opportunity to do things better.
Gibson: The Bush doctrine, as I understand it, is that we have the right of anticipatory self-defense, that we have the right to a preemptive strike against any other country that we think is going to attack us. Do you agree with that?

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Palin: Charlie, if there is legitimate and enough intelligence that tells us that a strike is imminent against American people, we have every right to defend our country. In fact, the president has the obligation, the duty to defend.

I suppose it is not a crime to not know the doctrine of the sitting president from your own party when you are running for vice president, but it does seem odd. But what is worse, is that after being told what that doctrine is, Palin is content to ramble on incoherently. Why doesn't this bother her? Clearly this is not a real issue because it doesn't bother her supporters either.

Here is some more from that interview:

Gibson: But this is not just reforming a government. This is also running a government on the huge international stage in a very dangerous world. When I asked John McCain about your national security credentials, he cited the fact that you have commanded the Alaskan National Guard and that Alaska is close to Russia. Are those sufficient credentials?

Palin: But it is about reform of government and it's about putting government back on the side of the people, and that has much to do with foreign policy and national security issues. Let me speak specifically about a credential that I do bring to this table, Charlie, and that's with the energy independence that I've been working on for these years as the governor of this state that produces nearly 20% of the U.S. domestic supply of energy, that I worked on as chairman of the Alaska Oil and Gas Conservation Commission, overseeing the oil and gas development in our state to produce more for the United States.

Gibson: I know. I'm just saying that national security is a whole lot more than energy.

Knowledge should matter for high government officials, but it doesn't matter precisely because the people who are listening have no knowledge either. Is Sarah Palin intelligent? There are plenty who would say that she is not. These include those who rank coherent thinking and the ability to create coherent explanations high on their list of what constitutes intelligence. But, it should be clear, that is not what

generally is thought of as intelligence. IQ tests have been measuring intelligence for decades with questions like these:

> At the end of a banquet 10 people shake hands with each other. How many handshakes will there be in total?
>
> A. 100
> B. 20
> C. 45
> D. 50
> E. 90
>
> The day before the day before yesterday is three days after Saturday. What day is it today?
>
> A. Monday
> B. Tuesday
> C. Wednesday
> D. Thursday
> E. Friday
>
> Which number should come next in the series 1, 3, 6, 10, 15?
>
> A. 8
> B. 11
> C. 24
> D. 21
> E. 27
>
> Library is to book as book is to
>
> A. page
> B. copy
> C. binding
> D. cover

It is a reasonable guess that neither Palin nor her supporters would do really well on questions like these. But the real issue is why questions like these were chosen to be on IQ tests in the first place. Certainly our concept of intelligence, and how to measure it, depends on some vague sense of mathematical reasoning ability rather than real-life situation reasoning ability.

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The schools make the same distinction. They do not seriously debate foreign policy in high school, but they do teach how to do number sequences. There might be those who would say that Palin and her supporters probably didn't do well on the math SAT either. But to me this is just a nonsensical way to look at intelligence. Plenty of smart people don't do well in, nor do they care about, math. But smart people do well in reasoning logically from evidence and in presenting a coherent argument for their beliefs. This is the essence of what it means to be smart and to be educated. We expect leaders to be coherent in what they say and to be able to justify their beliefs and actions. One can assume that those who are bad at number sequences present no problem for the country in any way, but being bad at detecting faulty reasoning has its consequences in a democracy.

Here is a bit from the Katie Couric interview with Sarah Palin that was shown on CBS during the 2008 campaign:

Couric: Why, in your view, is *Roe v. Wade* a bad decision?

Palin: I think it should be a states' issue not a federal government-mandated, mandating yes or no on such an important issue. I'm, in that sense, a federalist, where I believe that states should have more say in the laws of their lands and individual areas. Now, foundationally, also, though it's no secret that I'm pro-life, that I believe in a culture of life is very important for this country. Personally that's what I would like to see, um, further embraced by America.

Couric: Do you think there's an inherent right to privacy in the Constitution?

Palin: I do. Yeah, I do.

Couric: The cornerstone of *Roe v. Wade*.

Palin: I do. And I believe that individual states can best handle what the people within the different constituencies in the 50 states would like to see their will ushered in an issue like that.

Couric: What other Supreme Court decisions do you disagree with?

Palin: Well, let's see. There's, of course in the great history of America there have been rulings, that's never going to be absolute consensus by every American. And there are those issues, again, like *Roe v. Wade*, where I believe are best held on a state level and addressed there. So, you know, going through the history of America, there would be others but . . .

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Couric: Can you think of any?

Palin: Well, I could think of . . . any again, that could be best dealt with on a more local level. Maybe I would take issue with. But, you know, as mayor, and then as governor and even as a vice president, if I'm so privileged to serve, wouldn't be in a position of changing those things but in supporting the law of the land as it reads today.

So little of what Palin says makes sense that this interview was seen as a national embarrassment, provoking multiple explanations for it from the Palin camp, none of which said: She is just stupid and ignorant.

Obviously that is what her detractors were thinking. But is it true? Is she stupid and ignorant? How can we find out? Look at this next piece of the Couric interview:

Couric: . . . people have questioned your readiness since that interview. And I'm curious to hear your reaction.

Palin: Well, not only am I ready but willing and able to serve as vice president with Senator McCain if Americans so bless us and privilege us with the opportunity of serving them, ready with my executive experience as a city mayor and manager, as a governor, as a commissioner, a regulator of oil and gas, not only with my résumé proving that readiness, but I think the important thing here is that John McCain and I, we share a vision for America that includes energy independence.

What could be clearer than the idea that she is simply out of her league and that it was a foolish idea to promote her as a possible vice president? Why cynical politicians decide this is OK to do is not my problem. The question I want to address is what makes one intelligent, apart from genetics.

Looking at what we have seen here, we can think about our 12 cognitive processes one more time. Which of them are critical to the everyday assessment of the intelligence of another person that most people do on a daily basis?

Let's start by eliminating some. Being able to evaluate something, or having a set of values you believe in, has very little to do with basic intelligence. The samples of stupidity that I cite above do not indicate that any of this ability—determining what is important—is missing in the people being interviewed.

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Similarly, these people probably can influence one another, work in teams, and negotiate with one another to some extent. They may not be great at it, but we wouldn't characterize the ability to influence others well as a sign of intelligence. Many world leaders are very influential but not all of those are considered to be brilliant.

Similarly, the ability to be a good team player is no way considered to be a sign of intelligence. Some very bright people have difficulty working with others. These things are not signs of intelligence.

Modeling and experimentation ability aren't really important when we talk about intelligence. Experimentation is something scientists do. Children and chefs and nonscientists do it as well, of course. But we wouldn't criticize these interviewees if it turned out that they didn't know how to experiment. We certainly have no idea from these interviews whether they can experiment or not. We can guess that they cannot. We tend to think that experimentation is the province of brilliant people, but would we say that someone is unintelligent because they don't know how to conduct a real experiment? Or, that a chef is brilliant because he takes risks with food? (We may say that he is a brilliant chef, but that doesn't mean we think he is brilliant.) Experimentation has a lot to do with innovation, which is certainly related to intelligence, but, again, it really is not what we think about when we hear interviews and think that the people being interviewed are stupid.

Similarly, we don't know whether these folks can effectively create a model of the world. It seems a good guess that they cannot, but, yet again, this lies more within the province of science and very intelligent thinking than within our everyday definition of intelligence. Some very smart people have weird models of the world or no model of certain aspects of the world.

We do not think that the interviewees are stupid because they don't conduct experiments or create elaborate world models.

But a different story emerges when we look at the rest of the cognitive processes. Which of the remaining processes are clearly missing in the answers supplied by the interviewees above?

Obviously these people don't speak particularly well.

Being able to aptly describe your views, or describe a situation you have been in, or a thought you have had, is a hallmark of intelligence.

We judge people's intelligence, at least in part, by how well they speak.

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Does the ability to do diagnosis serve as a hallmark of intelligence?

Certainly doctors do diagnosis on a daily basis and doctors are highly respected in our society. Most people think that if you are a doctor, then you must be smart, but if you push on this belief, you find that what people actually think is that a doctor had to go to school for a really long time, learn of lot of complicated material, and then work really hard as an intern and then as a resident. People respect doctors and may well think that the doctor is the smartest person in their small town, but that is typically because she is likely the most educated person in that town. They easily may not consider her to have "common sense," which is one way that ordinary people describe their perception of intelligent behavior.

Diagnosis is done by plumbers, detectives, engineers, and beauty care professionals as well. Diagnosis is a very important cognitive process to learn. Learning to do it well often means the difference between success and failure on the job and personally. Can the interviewees do diagnosis? Miss South Carolina can.

She asserts that her friends can locate the United States on a map of the world. She can find contradictory evidence for the proposition presented to her, which is certainly part of diagnosis. The Palin interviewees have done diagnosis as well. They have determined what is wrong with the country. They may not have done much more than listen to someone on talk radio, but they came to a conclusion based on the evidence presented to them.

But they have done it badly. That is why they seem stupid.

Coming up with an accurate diagnosis requires intelligence. Everyone does diagnosis, but we seek counsel from those who do it better than others. *Diagnostic ability is a hallmark of intelligence.*

What about causation? Let's consider Miss South Carolina's revised remarks again:

> "Personally, my friends and I, we know exactly where the United States is on a map," she said. "I don't know anyone else who doesn't. If the statistics are correct, I believe there should be more emphasis on geography in our education so people will learn how to read maps better."

Miss South Carolina thinks "there should be more emphasis on geography in our education so people will learn to read maps better."

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In many ways this remark is as dumb as her early remarks. Why do I think this?

Because it makes it clear that she hasn't a clue, and doesn't really care, about causation.

And, this is exactly the problem with Sarah Palin's remarks to Katie Couric as well:

> Couric: . . . people have questioned your readiness since that interview. And I'm curious to hear your reaction.
> Palin: Well, not only am I ready but willing and able to serve as vice president with Senator McCain if Americans so bless us and privilege us with the opportunity of serving them, ready with my executive experience as a city mayor and manager, as a governor, as a commissioner, a regulator of oil and gas, not only with my résumé proving that readiness, but I think the important thing here is that John McCain and I, we share a vision for America that includes energy independence.

Why do I think that the problem here is about a misunderstanding of how to determine causation? Miss South Carolina has determined the following things to be true:

> If students can't do something, they should be taught to do it.
> If students can't do something, it is because they weren't taught to do it.
> If students can't do something that it seems anyone should be able to do, then it should be taught in school.
> Reading maps is more important than whatever would have to be eliminated from school so that reading maps could take its place.
> These decisions should be made on the basis of statistical evidence of student's abilities.

But is any of this reasonable? Not only could one argue with each of these propositions, but it is fair to say that Miss South Carolina herself doesn't know that she holds these positions, that she hasn't thought about them, and that she might disagree with what she said if someone pointed this out to her.

In other words, she cannot reason well precisely because her beliefs indicate that she does not think about causation, and one can

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guess that she doesn't think about causation because no one ever tried to get her to do so. So she may very well be smart but she sounds stupid because she seems to be unaware of her own causal reasoning and is not very good at it. Being good at understanding causation and figuring what could possibly cause what and why is a hallmark of intelligence.

Intelligence can be enhanced by practicing the cognitive processes that are the basis of intelligent behavior and intelligent reasoning. One of these hallmark processes is certainly causation.

We could make Miss South Carolina smarter by teaching her how to determine what causes what and asking her to figure things out and explain them to others using a causation model that she could defend. Of course, it would have been better if this process started when she was a small child.

Now, with that in mind, let's look at the Palin remark. Palin was asked about her readiness for the office of vice president, which isn't much of an office really. What was really being asked was her readiness for the presidency, which was not unreasonable to worry about considering John McCain's age. She responded in a way that made clear that she has no understanding of causation either.

In the statements above, she asserted (implicitly) the following beliefs about causation:

Any mayor or city manager is ready to be president.
Any governor is ready to be president.
Any commissioner is ready to be president.
Any regulator of gas and oil is ready to be president.
If you have a vision of energy independence, you are ready to be president.

Now, of course, one of these beliefs is, in fact, shared by the country since we have chosen governors to be president. But the other beliefs are simply wrong. No one thinks that having a vision of energy independence prepares you to be president or that being an oil and gas regulator prepares you to be president.

So, what does Palin misunderstand here? She doesn't get the idea of preparedness as causation. Having a degree in accounting prepares you to be an accountant, most would agree. We believe, as a society, in certain rites of passage preparing you for the next step. Palin apparently has never thought about this or why anyone would hold such beliefs.

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It is not an unreasonable question to ask whether being a U.S. senator prepares you to be president. It would not have been odd if Palin had asked Couric whether we ever had a president who actually was prepared for the job. Other than vice presidents who work closely with a president for 4 years or more, it is not unreasonable to assert that we have a history of unprepared presidents. But she didn't say that because preparedness is a causative notion and Palin doesn't seem to get causation. She may be bright enough to have been taught about causation when she was small, but apparently this didn't happen. As a result, she seems stupid to those who do understand causation.

Palin recently has made statements that make you wonder where her ideas about causation come from. This is from a 2009 interview on ABC:

> Walters: Now let's talk about some issues—the Middle East. The Obama Administration does not want Israel to build any more settlements on what they consider Palestinian territory. What is your view on this?
>
> Palin: I disagree with the Obama Administration on that. I believe that, um, the Jewish settlements should be allowed to be expanded upon because the population of Israel is going to grow. More and more Jewish people will be flocking to Israel in the days and weeks and months ahead.

What is the problem here? Again, there is a question of causation, but it is more obvious that that is the issue. No one who hears this statement would fail to ask why Jews would be flocking to Israel in the weeks and months ahead.

It is important to understand that determination of causation is the backbone of an intelligently thought out belief system. People believe certain things. They believe that the sun will rise in the morning and that their parents will come home from work at night. Beliefs often are based on observation and generalization. People also are taught beliefs. There are many ways to acquire beliefs. Children get them from their parents mostly but also from friends and siblings. At some point, however, reality comes into play. Reality often means comparing a belief with what you know or can figure out about causation. You can believe that the sun rises each morning but not know its cause. And, of course, you can learn the cause. You can believe that the

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Great Pumpkin rises on Halloween if you like, but at some point you might notice that this doesn't seem to take place.

Beliefs, reality, and the rules of causation are interrelated but they are not the same thing. Causal knowledge should, however, enable one to alter erroneous beliefs that don't stand up to what one knows about causation.

So what would cause Jews to suddenly flock to Israel? Is she privy to information about another Holocaust or is this some fundamentalist religious belief? She doesn't say. The fact that she doesn't say, is what makes her look either unintelligent or incapable of clear reasoning. Being able to justify one's beliefs by citing common knowledge or revealing knowledge known only to you involves relying on commonly known rules about causation.

What about prediction?

You can believe that New York will beat Philadelphia in football. You can predict it based on evidence. You can explain the cause and effect that have made you come to this point of view. But, after New York loses, you need to modify some beliefs that you previously held. At the very least you have to acknowledge that your prediction was wrong and you might want take this into account the next time you make a prediction, by finding out what went wrong in your reasoning, if anything. Or, you simply can say your team wasn't lucky, of course.

Prediction relies on beliefs, and in many situations predictions are or are not verified immediately and new thinking can begin. But when one gets married, for example, one is predicting that the marriage will be good and will work out well for all parties. One might not realize for some years that this prediction was wrong. Then, when seeking a new marriage, the predictor hopes she has determined what went wrong by seeing what erroneous beliefs were held the last time.

It is very good to be able to predict, but predictive ability is not seen as a sign of intelligence. After all, people seek out fortune tellers because they think fortune tellers have a gift, not because they think fortune tellers are very bright. At the 2010 Olympics an octopus was apparently capable of making accurate predictions. No one claimed that it was an especially bright octopus.

A prediction made by someone that is justified by, "I just feel it," makes the predictor look foolish. In contrast, a prediction about relativity, for example, that is complex to understand but has been explained clearly and later is borne out by evidence makes the predictor

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look like a genius. But what actually makes us feel that a scientist's accurate predictions make him smart is the reasoning behind those predictions, the causal explanation.

We can see how intelligence, or the lack of it, is perceived by people and we must begin to reconsider how intelligence should be measured by those trying to put numbers to mental abilities. And, we can see why those Palin supporters seem so dumb. Let's look at one of them again:

> Interviewer: What do you think she would bring in terms of policy to office?
> Young woman: Good judgment.
> Interviewer: Any specifics?
> Young woman: I think she would control the out-of-control spending.

This is a prediction. The question is what this prediction is based on. It is a good guess that the young woman cannot cite examples of Palin's good judgment and has no idea whether Palin was able to control spending in Alaska. If she were able to cite examples, that is, if her predictions were supported by evidence that she clearly articulated, we would, in fact, think that the young woman was smart. Perhaps she is smart and perhaps the interviewer deliberately cut out those responses. It seems unlikely, given the weird "czar" remark that followed this, but the point is that we seek such evidence when we make a judgment about someone's intelligence.

What about planning? Those who make bad plans are usually laughed at. Criminals who get caught by doing something dumb are always made fun of by the press. Bad planning makes a person look stupid.

Bad judgment, on the other hand, is more easily forgiven. When you make a mistake, you can always claim to have used bad judgment. Make the same mistake again and you begin to look stupid.

So, if we are interested in making people more intelligent, as opposed to more knowledgeable, it is clear that we need to redefine what we mean by intelligence.

Intelligence is the ability to diagnose well, to plan well, and to be able to understand what causes what. To do this one must be able to reassess one's belief system when new evidence is presented and

one must be able to explain one's reasoning clearly to those who ask. And, one must have a knowledge base of relevant information to draw upon. But our education system, in concentrating only on the knowledge base and not on independent reasoning from that knowledge base, has ensured that the knowledge base remains incomprehensible to most people and therefore is immediately forgotten after school is over.

It would be a good idea to eliminate IQ tests as a measure of intelligence and begin to teach people to do diagnosis, to plan well, to be able to determine causality, and to clearly explain their reasoning to others.

Those that cannot learn to do this would rightly be called stupid, but those who can would rightly be called intelligent.

Degrees of intelligence would be about one's ability to do this for more and more complex issues in complex domains.

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CHAPTER 11

Restructuring the University

It is a miracle that curiosity survives formal education.
—Albert Einstein

When I moved from Stanford to Yale, it was entirely because of the efforts of Bob Abelson, a psychology professor who became my good friend and wonderful colleague during the 15 years I was at Yale. Bob had been instrumental in helping to create the Computer Science Department at Yale, which is the department that wound up recruiting me(Bob had hoped I would be outside the department structure since I didn't really fit in anywhere very well, but he couldn't win that argument.)

Bob told me a story about the creation of the Computer Science Department at Yale, which involved his having to argue with another faculty member on a university committee about why a department should be created around a machine. He said that one member of the committee actually asked him whether there should be a department of lathe science as well.

We both found this to be pretty funny at the time. Now, however, I have to admit that the guy had a point.

I have been a professor in quite a few academic departments in my university career: linguistics, computer science, psychology, education, and electrical engineering. These departments all have some something in common: They have no real reason to exist. One would assume that departments represent academic disciplines that are coherent in some way, but it simply isn't so. The people in a computer science department, for example, have in common that they all think about computer-related issues, but so do people in other disciplines. Some parts of computer science have more in common with mathematics than they do with other parts of computer science. There were many people in the departments that I was in who worked on things that I didn't understand or care about. All our interchanges were about

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department affairs, never about computer science. We had nothing to say to one another about that. The same is true in every department. Academic departments are made up of faculty who have been thrown together for historical reasons but really have no business being in the same department.

What does a clinical psychologist have in common with someone who studies animal behavior? Do they talk about crazy chimps? What does an historical linguist have to say to a Chomskian linguist? What does someone who works on the philosophy of mind have to say to someone who studies religious philosophy?

Departments probably should have been organized around ideas instead of around words. I tried to facilitate that when I helped create cognitive science as a discipline by founding the *Journal of Cognitive Science* and the Cognitive Science Society. That was over 30 years ago and while some cognitive science departments have been created, in the end the disciplines that study the mind continue to do so in their own ways. Computer scientists who study the mind build computer models, and psychologists who study the mind run experiments. Anthropologists who study the mind do descriptions. That these are three of the twelve cognitive processes is no accident. Departments are organized to some extent around the processes that they use, but that is by no means the central organizing principle. As that old adversary to the creation of the Yale Computer Science Department said, the central organizing principle was a machine and that is kind of silly.

Who suffers from this state of affairs? The students, of course. When a department's faculty meets to decide what courses students must take in order to major in their field, it is not a sage conversation among scholars about what it means to be a computer scientist or psychologist. It is a political tug fest, where people from very diverse fields within these departments push and shove for turf.

Why do they care? There are two big reasons. First, if no one signs up for the courses you teach, you won't be teaching them for long. Second, if many students sign up for the courses you teach, you can justify hiring more faculty in your subdiscipline, which means more friends to hang out with and more power in department meetings where the votes can now go your way. You think this stuff doesn't matter? These issues are the lifeblood of every university department.

Let's look at both of these and see why they might matter.

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Instead of subjects then, let's take a fanciful tour through the twelve cognitive processes and see what would happen to the university if it organized itself around those processes.

First let's look at the existing Yale departments and schools:

African American Studies
Anthropology
Applied Mathematics
Applied Physics
Architecture, School of
Art, School of
Astronomy
Biology
Biomedical Engineering
Chemical Engineering
Chemistry
Classics
Computer Science
Drama, School of
East Asian Languages & Literatures
Economics
Electrical Engineering
English Language & Literature
Environmental Engineering
Epidemiology & Public Health
Forestry & Environmental Studies, School of
French
Geology & Geophysics
Germanic Languages & Literatures
History
History of Art
International Relations
Italian
Law School
Linguistics
Mathematics
Mechanical Engineering
Medicine, School of

Music, School of
Near Eastern Languages & Civilizations
Nursing, School of
Philosophy
Physics
Political Science
Psychology
Slavic Languages & Literatures
Sociology
Spanish
Statistics

This list may be somewhat inaccurate since it is taken from a list of possible majors, which is not the same thing as a list of departments. I just edited it to reflect my memory of Yale, which could conceivably have added a new department or two since I was there 20 years ago (but departments are not easily created or deleted at Yale).

Now let's ask what would happen if we reorganized.

Which departments specialize in prediction, for example? Clearly, economics is about prediction, as is physics, and sociology, and psychology, and any branch of engineering.

Which departments specialize in judgment? Law does certainly. Medicine, parts of psychology, parts of anthropology, aspects of statistics, architecture, and art history do so, as do many others.

Which departments specialize in modeling? Computer science certainly does, as do parts of psychology. Engineering disciplines do and nearly all of the sciences do. Economics and sociology do as well.

Which departments specialize in experimentation? All of the sciences, plus psychology, do experiments. Economics and sociology people sometimes do them. Political scientists do experiments.

Which departments specialize in describing? The humanities specialize in this, as do English and Italian, and Near Eastern languages, and linguistics, and anthropology. Parts of psychology and medicine and law do as well.

Where is diagnosis practiced? In medicine, of course, but also in law, business, and engineering.

Where is planning studied and practiced? In engineering and in architecture certainly, but also in business, medicine, computer science, and psychology.

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Where is causation worried about? Nearly everywhere. Anyone in the social sciences or in any practical discipline worries about causation.

So, should departments be organized around the twelve cognitive processes? Probably not.

It would be difficult to do and everyone would be against it. It is difficult to change what has always been in place. But those who study diagnosis would benefit from being around others who were doing diagnosis all the time. And those who are worried about descriptions would do well to hang around others doing the same. But it doesn't matter that much, really. In a research university, professors really just talk with people who are doing more or less exactly what they themselves are doing. Departmental seminars are social gatherings more than intellectual meeting places, since a talk on one subspecialty rarely interests those who work in different subspecialties in the same department.

But none of this really matters. Our research universities (of which there are maybe 50 in the United States) are doing very well, and my problem is not with them. It is with the institutions that claim to be educating our youth for the future and that employ professors who have a Ph.D. from a research university and who really wish they were still there. The research universities serve as professor training grounds that train many more professors who can do research than we possibly could need. These people then become professors at institutions where hardly any student intends to get a Ph.D., but they continue to teach the same Ph.D. training curriculum that they studied.

This has got to stop. The problem is not so much the universities as the high schools, of course. As long as college is seen as a professor training ground, then high school is seen as way to get into the professor training ground, and a nonsensical system evolves that trains high school kids to study what professors need to know. This has to end.

When students sign up for psychology at their university, they want to know what is wrong with them and their parents, and instead they study how to do experiments because that is what their professors learned to do in graduate school. When students take computer science in college, they want to learn to use the computer, but instead they study the mathematics of computation because that is what their professor does. When kids study chemistry in college, they are doing it in order to become doctors for the most part, but instead of learning

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chemistry that doctors need to know, they study the chemistry research that their professors are doing. When they want to learn business, they learn economics. When they want to learn how to write, they learn about literature. All of this happens because of the nature of the research universities' domination of our education system.

In order to fix our high schools, we need to get rid of departments based on rather arbitrarily defined academic subjects.. We should organize universities around the kinds of work people do, where work means the kinds of thinking that they engage in, not the machines that they play with. Anyway that's my suggestion.

AN IMAGINED FIRST YEAR IN COLLEGE

We all know that what I propose will never happen. University faculty would stop such a proposal at every turn. So, in the name of reality, I want to make a suggestion that university faculty possibly could adopt.

Simply divide the 4 years that make up college into two parts. Dedicate the first 2 years to the teaching of the 12 processes and the last 2 to the study of the subjects that the faculty so dearly love. *Introduction to X,* which now dominates the first 2 years of college for most students, would be abandoned. The faculty hate teaching it anyway and the students hate taking it.

How would this work? Let's first consider the set of processes grouped under conceptual processes.

Conceptual Processes

Prediction is an area of life that is worth getting good at doing. Who, in the various faculties, organize their daily lives around predictions? Economists make predictions. It is what they do all the time. Medical doctors make predictions. Physicists make predictions. Political scientists make predictions. Let's imagine that students were taught by a team of people from these four areas who were the exactly those people who specialized in making predictions all the time in their careers. And, let's suppose that they created a year-long course in how to make predictions based on known evidence, past cases, and

pushing the boundaries of what is known. Wouldn't this be a better course than Introduction to Physics? The teachers could introduce whatever aspects of physics they wanted to help students understand the predictive process in that area, but other faculty who did prediction in other areas would be part of the discussion. There would be a set of interesting issues ranging from predictions that were thought to be right but weren't, to predictions that are being made today in each area. The content would be the predictive process itself, not the traditional subject matter. Statistics (and other useful tools) would be taught in this context while the predictive process was being studied.

Modeling. Who build models? Psychologists think about models of the mind, as do computer scientists and philosophers who specialize in thinking about thinking. Architects and economists build models of a different sort. Engineers work with models regularly. All of these people use different modeling tools but they work on the same thing: trying to figure out how something works by building it and seeing if they can replicate it. They may be using a computer or building blocks or electricity or art. It makes no difference. It is all an attempt to see how things work by building some facsimile. This is an important idea in human thinking, and a course should be taught to undergraduates on how to do it by the people who actually do it, teaching different techniques as they go. They are many ways to build a model, and students in college should know the possibilities before they take on further study.

Experimentation. Psychologists do experiments. Chemists do experiments. Physicists do experiments. Medical researchers do experiments. (The drug companies are constantly doing experiments that affect us all.) Why is there no course in learning how to do an experiment? Shouldn't students be learning how to come up with a hypothesis and how to test that hypothesis? Isn't that more important as a fundamental building block of the mind than any course offered to freshmen in college today?

Evaluation. Every academic field does evaluation. In every discipline there are ways and means to discuss and evaluate the worth of papers and research and practical proposals. Businesses are

evaluated regularly and evaluation is taught explicitly in business school. Political scientists evaluate politicians and political systems. Historians evaluate what makes governments, battles, cities, and a range of other things successful. Architects and urban planners and engineers worry about evaluation of what they propose and produce. All of these people could combine to teach students how to evaluate. This is very important part of functioning in any society.

First College Year Summary

It would be my contention that a freshman year made up of these four processes, taught in four simultaneous courses that were designed to relate to one another in various ways and at specific times, would be a wonderful thing for teaching people how to think. The best of our faculty could teach what they thought about to students, who now would be ready to start to think rigorously. By the end of this first year, students could begin to specialize, not in academic subjects just yet, but in other processes that build on the conceptual processes.

SECOND YEAR IN COLLEGE

Let's look at the analytic processes.

Analytic Processes

Diagnosis. Who does diagnosis? Doctors certainly. Lawyers certainly. All the people I mentioned above who are building models need to figure out why their models may have gone wrong. Anyone who manages people or large operations needs to figure out all the time what has gone wrong. In fact, diagnosis is a critical part of nearly every area of thinking and every area of work. Diagnosis needs to be studied for its own sake. How do we do diagnosis in principle, no matter what the situation?

Diagnosis also needs to be examined in the various contexts in which it can be applied. A course in diagnosis, taught by the entire faculty who do diagnosis regularly, showing real work and real situations that they have had to handle, and coming after the first year, would have two advantages. One, it could build on the basic conceptual

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processes discussed above. Second, students could choose to think about diagnosis in some areas as opposed to others. Art experts might teach about art fraud, and lawyers might teach about detecting business fraud. In each case there would be similarities, and these should be taught by a group of faculty from different areas, but at the end of the course students should be able to start to actually do diagnosis under the tutelage of an expert in an area that interests them.

They actually may not know much about that area of knowledge, of course, and that would be the objection of the faculty to this idea. But it is my contention that faculty have had this wrong all these years. Teaching the basics to students, who have no concept of their possible use, is really not helpful. All these introductory courses are just an excuse to pack kids into lecture halls and pretend to do education while saving money on hiring more teachers. Teachers should pose real-world problems to students and encourage students to gain the knowledge they need to solve them.

Diagnosis is a perfect area for this. One can try one's hand at crime detection, without knowing everything about the details of how one does it, with the help of an expert looking over one's shoulder. This kind of just-in-time learning is how humans have always learned what they needed to know. The idea that school should teach you what you need to know before you need to know it, is seriously flawed. People can't remember what they learned, years after they learned it in school, if they haven't been practicing what they learned all along.

Judgment. Law typically is not part of any college curriculum because law schools are recent inventions on college campuses (that is, they are from the past century and not the century before) so law never got to be part of the required or even elective set of college courses despite the fact that so many students want to be lawyers. Judges make judgments all the time, and those lawyers who teach judges to make judgments should be teaching freshmen to make judgments as well. Of course, artists and musicians and literary critics make judgments of a different sort, as do philosophers and businesspeople. All of these people could be teaching a course together on how to make judgments fairly and how to determine what is fair. This is where ethics and morality come into play as well.

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Planning. What I said about diagnosis is also true of planning. We plan in everything we do. There are economic plans, architectural plans, medical treatment plans, business plans, and so on. A computer program is a type of plan, and research plans are everywhere in a university. Writing these plans is not so different in principle, but in reality a business plan doesn't look much like a treatment plan. So there is the idea of a good plan and the understanding of what a plan looks like, what a plan's description ought to be like, in any area of life. You may think a business plan should look a certain way, but if the business community has a different idea, that idea will turn out to be right.

Students should have the opportunity to write all kinds of plans, learning about the principles of planning while learning about what officially is considered to be a good plan in an area of the real world that interests them.

So, as part of the second year, students should get to study planning, and then study successful planning documents, and then write plans and have them evaluated by the faculty.

Causation. Who studies causation? Everybody. Psychologists worry about what makes people crazy, doctors worry about what makes people sick, environmentalists worry about what is ruining the planet. Physicists want to know how the world works. Computer scientists want to know how computers can work better. Engineers do nothing but causation, really. So, here again, determining causes is a basic cognitive skill and it can be learned within the second year as well, in the same way I have been describing building on what came in the first year to tackle complex problems of causation in areas that interest the students.

Social Processes

Describing can easily be taught, as all of the eight processes discussed above are taught by requiring students to present their work in written and oral form. Students need to learn to write but they also need to learn to talk and to use alternative media to make their points and to explain what they have done. A coherent course of study in how to describe properly is easily within the ability of any college faculty and ought to be its highest priority, taught from many different

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points of view, teaching what description is about not how to work PowerPoint.

THIRD YEAR IN COLLEGE AND BEYOND

Now what next?

After these 2 years, what will students be able to do and what should the faculty do with them? Clearly, faculty, as I have pointed out, want to teach what interests them—their own research subspecialties. Faculty will want to continue to insist on there being majors. Students should not have to be forced to select a major subject because majors (and, of course, subjects) are at the root of the problem.

Whose needs do majors satisfy? Faculty like them because the faculty can determine that to be a major in X students must know all of its aspects, and then insist that students, take obscure courses that they would not want to take. This is another way of making sure that faculty get to teach whatever they want to teach.

An alternative would be to let students specialize in a cognitive process, like diagnosis, and an area where they have become knowledgeable to which diagnosis applies, like financial diagnosis or behavioral diagnosis. Every student who majors in business doesn't really want to, or need to, know every aspect of business, and a student who majors in psychology doesn't need to study clinical, social, animal, and developmental psychology, if what he is interested in is diagnosing personality disorders, for example.

Let students specialize, if they want—they shouldn't be made to, but let them specialize in processes that they might want to become proficient at. We shouldn't force them to take courses , that in no way serve their interests. Such requirements are made using arguments about breadth when they are there to make sure that undersubscribed courses get taught. Majors in computer science at Yale when I arrived there had to take artificial intelligence and numerical analysis. These subjects never interest the same people. They are as different as accounting and clinical psychology. These requirements were there because faculty wanted to make sure there were students enrolled in their course. If they didn't, they would have had to teach something they didn't know as well. Faculty made arguments about the well-rounded student, but students' needs had nothing to do with it.

Whenever you see a required course in a departmental major, there is politics behind it. Someone has traded with someone else. If you make them take my course, then I will vote to make them take your course. It is how requirements are created at every school. No one is thinking of the students' needs, trust me.

So what if we did think of the students' needs? What would we do in the third and fourth years of college? It seems obvious that students would like to learn some job skills and that they would like to be able to pick subjects that interested them for further study. In addition, they might have found something that they were working on in the first 2 years that made them want to get better at it. This is what the rest of college should look like then.

For computer science, for example, students should get to select software engineering, as suggested by my colleague earlier, if they want to be employable, and they should be able to improve cognitive skills that they may have acquired in the first 2 years. They may not have studied various subspecialties in computer science, so they should get to choose the ones that interest them. They also may have an interest in pursuing some noncomputer-related subjects taught at the university, for their own edification. In other words, they get to choose and the choices should include job skills and continued use of the cognitive processes they have honed in the first 2 years. Faculty simply should offer choices, and students should pick.

What would happen if this were done?

In a world where students got to decide what they studied, many of the departments listed above would disappear. There might be some call for Near Eastern languages or art history, but not that much. These departments exist for historical reasons and universities are reluctant to get rid of them, so universities make requirements that students take courses in them. An enormous English department is justified only by the sense that universities ought to have that sort of thing and by continuing English literature requirements for students. Without that, such departments would be much smaller than they are.

Therefore, it is clear that this cannot happen.

What could happen is this: High schools could change and colleges would have to adapt. This is possible because high school does not have to be the way it is today. Its current organization around academic subjects makes no sense. This can be fixed by simply building different kinds of high school curricula. But how can we change high school?

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As it stands now, we can't. High schools teach what colleges tell them to teach. Recently I was looking for a picture of the man who was principal of my elementary school many years ago. I wanted to put it in a speech I was about to give. So, I went to the P.S. 247 (Brooklyn) website and discovered that it is now a "New York City College Partnership Elementary School." When I finished laughing, I started to wonder when this "everyone must spend their entire childhood worrying about getting into college" nonsense would end. P.S. 247 was not a great bastion of learning or a fun place in the 1950s, and I can only imagine how awful it is now. I wondered why P.S. 247 now had to be a college prep elementary school. A commenter on what I wrote noted that the old trade schools, which used to dominate the New York school system, were serving mostly minority populations and this had to stop; so now "everyone can go to college" is the mantra of the equity folks.

But the problem is, of course, that what is being bought with all this college preparation is the right to be an unemployed English major instead of the airplane mechanic you might have been if you had gone to Aviation High School.

High school has become all about college, and college is all about scholarship and research, so what is left? So who teaches students to think clearly? Who teaches students about the possibilities there are for work that might interest them? Who teaches students how to get along with one another, and who teaches people how to communicate well?

Certainly not the high schools, which are obsessed with test score preparation, which means rote memory for the most part.

Certainly not the colleges, which are run by faculty who do research and who think mostly about that.

One possible answer is community colleges, but when someone like me suggests that skipping college and going to community college instead to learn an actual skill might be a good idea for most students, that suggestion is disregarded as being on the lunatic fringe.

The good news is that because of all this craziness, there is a big opportunity to build an alternative, which I will discuss in Chapter 14.

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CHAPTER 12

How Not to Teach

Some people will never learn anything, for this reason, because they understand everything too soon.

—Alexander Pope

My daughter learned a lot from me and from her surroundings when she was small. All children learn all the time when they are little. But what are they learning? When Hana was about 1-1/2 we lived in Switzerland. Hana was my parent's first grandchild. Since they were in New York, there were frequent phone calls back and forth and more than the occasional visit. Once during this period I got curious as to whether Hana knew the names of her grandparents. I figured she might not know the word *name* so I asked her, "What does Gammy (her name for my mother) call Poppy (my father). She immediately responded, "Maaacc!!" imitating the intonation and exasperation of my mother trying to get my father's attention. I asked what my father called my mother, and she said "Marge!" in the tone of an authoritative military call.

Hana talked to her grandparents on the phone quite a bit. One day I noticed her walking in furious circles while she was talking, at one point almost bringing the phone down on her head. Now who had been teaching her that? Well . . . me. That's what I do when I talk on the phone. And it is still what my daughter does, 30 years later.

Speaking of 30 years later (well, 20 in this story), I observed this same seemingly imitative behavior in Hana when she was in college. I remarked to a friend of my daughter who went to school with her in Evanston that there was a no left turn sign in Evanston (where I also worked) that I always ignored because it was so stupid. She said that my daughter always ignored the same sign and also said it was stupid. The curious part of this story is that my daughter and I, having our own cars and lives, had never been in a car together in Evanston and neither had we ever discussed this sign.

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Did I teach her to ignore stupid no left turn signs? Of course I did. But I never said such a thing to her or taught her how to decide when it was safe to ignore a sign. I was just in her world and she was watching.

I observed a similar phenomenon with my son. I like to watch football and my son sat with me and learned to watch too. Twenty years later, when an event occurred on the field, I noticed that we said exactly the same thing at the same time. "Oof," "oh come on," "ugh." Whatever event on the field caused me to exclaim something, caused my son to exclaim the same thing. Now, I could not tell you what was an "oof" and what was an "ugh," and neither could he. I do this kind of thing unconsciously and so does he. He learned what I had to teach, but he doesn't know what he learned and I don't know what I taught.

What does this have to do with teaching? Perhaps we just need to watch our teachers and then we can copy what they do. Well, not exactly.

I took a yoga lesson the other day. The instructor got into a pose and said I was to copy what he did. I said there wasn't a chance that I could copy what he did. He wasn't used to being talked to like this. (Most students are better at being students than I am, of course.) I explained that I could barely understand what he had done, despite seeing it, and I certainly didn't know the intent of what he had done, so I wouldn't know which aspects of his action were significant and which were unimportant. I told him this was no way to teach.

Now I know I will not be able to teach the yoga instructor how to teach better, and I doubt he will be reading this book. But whether you are teaching yoga or baseball or science or business, the rules are the same. Before I list them, let me start with the top mistakes teachers make. Some of these mistakes are forced on teachers by a badly designed education system, and some are ones that teachers make no matter what they are teaching or which system they are teaching in.

Some of these are less than obvious. So, let's consider them one by one:

Mistake #1: Assuming that there is some kind of learning other than learning by doing
Mistake #2: Believing that a teacher's job is assessment
Mistake #3: Thinking there is something that everyone must know in order to proceed

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Mistake #4: Thinking that students are not worried about the purpose of what they are being taught
Mistake #5: Thinking that studying can replace repeated practice as a key learning technique
Mistake #6: Thinking that because students have chosen to take your course, they have an interest in learning what you plan to teach them
Mistake# 7: Correcting a student who is doing something wrong by telling him what to do instead
Mistake #8: Thinking that a student remembers what you just taught him

Now, let's consider these teaching mistakes one by one.

Mistake #1: Assuming that there is some kind of learning other than learning by doing

All of us, teachers or not, believe that we can teach by telling. When I say that people learn by doing, people think: Yes, maybe most of the time, but you also can learn by being told. The issue is what it means to learn, of course. I define learning in terms of the cognitive processes that are exercised during the attempt to learn.

This means that when I say the following: "You cannot learn by being told," what I mean is that that you cannot learn to do any cognitive process by being told. I can tell you that George Washington never told a lie, and you could learn that and you could make it something that you now believe. But this is not learning in the sense that it doesn't make you more capable of doing something because you have learned it. Subject-based education relies on learning by telling because for most of the things that are being taught, there is no other way to learn them. How else could you learn that George Washington never told a lie? By observation? By historical research? We learn this by being told. But we do not learn cognitive processes by simply being told. We learn them by practicing them.

This confusion is why teaching in its current form, with a teacher in front of a class, exists at all. Without this focus on subject-based education, it could not exist. And, this is why parents never stand in front of their kids teaching them things. Cognitive processes cannot be altered by telling.

So, we have rule #1 for teaching:

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Rule #1: A teacher should never tell a student anything that the teacher thinks is true. Now, on the surface this seems ridiculous. How can you resist telling students the truth? Isn't that your job as a teacher? No. It isn't.

Why not?

Because, in general, students wouldn't believe you anyway. Students don't take what teachers say as gospel. And, they tend not to remember what you say. I have taught many a class and asserted *X* only to be told minutes later that I had asserted *not X*. People don't listen very well. So what is the point of saying true things, besides feeling good about having said something wise? The point certainly isn't teaching.

How will students learn what is true, then? By discovery. By failure. By repeated experience. By talking with people about what they think and having to defend their claims. Not by listening to you.

Let's consider mistake #2.

Mistake #2: Believing that a teacher's job is assessment

What does this mean? In the real world, teaching and assessment are usually conjoined. Teachers teach and they also give grades and test. This is a problem. It is a problem because satisfying the teacher becomes a goal of the student that tends to supersede learning, and it is a problem because as the ultimate arbiter of truth, a teacher gets to say what is true and students have to believe it. To fix this a teacher needs to not be in this dual role.

This is easier said than done, of course. I used to tell students they would get an A no matter what they did as long as they handed in the work that I asked for. This had the effect of having many students sign up for an easy A and having the administration become annoyed with how many A's I gave out. Both of these outcomes were entirely predictable. But what I did, changed student behavior in the class greatly.

They often wrote about how much they wanted to please the teacher and how once I took that out of the equation, how much it changed their view as to why they were doing anything at all. For some, it had a very bad effect. They just didn't take the class seriously. Others took it more seriously than ever because they were the judges of their own work. (I asked them to defend their viewpoints to the class during class time so their friends were also judges.)

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Of course, the system teachers teach in does not allow them to separate assessment and teaching. But it doesn't allow them to teach only cognitive processes either. For a cognitive process-based education system to work, teachers must be allowed to teach, and others should be the ultimate judges of success. Teachers need to help students get where they are trying to go and let others decide whether they have gotten there.

So, we have rule #2 for teaching:

Rule #2: A teacher should never be the ultimate judge of the teacher's own students' success. Here again, this seems absurd. But in the end, this separation of responsibilities is very important. Parents judge how well their children are walking and talking, of course. But the children are not anxious about passing their parents' assessments. The success is its own reward. And in the end, others judge how well your children speak. A parent is really there to help, not judge.

Let's look at mistake #3.

Mistake #3: Thinking there is something that everyone must know in order to proceed

This is, of course, the killer mistake. Go to any faculty meeting, or interview any teacher, and he will tell you that something is the basis for all that follows that, and if you don't know it, you can't proceed in the subject he teaches. Theory first is the mantra of nearly every teacher. The question is why this is so. I have been in arguments about this so often that I wonder why these views are so widely held.

Teach theory first, then practice. Because of this mantra, computer science majors often don't learn to program in a way that actually would make them hirable, and budding medical students drown in a sea of chemistry equations. Businesspeople learn about finance long before they learn how to run a business, if they ever do learn that, and psychology students learn about B.F. Skinner when what they really wanted to know is why they are so screwed up.

Why do teachers like teaching theory so much? I think that the answer is that it is orderly stuff, with official answers that the teacher gets to know while the students try to learn them. This puts the teacher in a powerful situation and teachers are comfortable with that. Teaching practice is much harder. There often are no right answers and many screw-ups, and the learning process is much messier.

Theory is a subject. Practice in a field means exercising the twelve cognitive processes we have been referring to, and because of that, progress is much harder to ascertain. You can test theory. It is harder to test practice. One can gain a lot of knowledge about what doesn't work while practicing and still produce nothing worthwhile. The lessons learned are harder to assess. Teaching theory makes all teachers more comfortable. Of course, theory means there is no doing, so no one really learns much. After they pass the test, they can forget what they learned with no consequences.

There is a big difference between knowing that and knowing how. Schools have always emphasized knowing that. The primary reason for this is that the stuff you can say you know is testable. But knowing how is much more important. So we worry that students don't know that George Washington was president, without asking what the use of that knowledge is. There may be a use for that knowledge. It is doesn't come to me immediately what that use would be, but let's assume there is some use for that knowledge for your average student. If so, that knowledge should be taught within the context in which it might be used. There is, for example, a use of that knowledge for constructing a history paper about the origins of the United States. Of course, that itself may not be a useful exercise. In the context of doing that exercise, assuming there was good justification for it, that knowledge would be naturally learned. Natural learning of factual knowledge, learning it when it comes up, is fine, as long as it isn't being learned so that it can be tested. It is much more useful to learn knowledge when that knowledge enables you to do something, however.

There are endless books about what every 3rd-grader must know that use the idea that factual knowledge is the basis of the ability to read as their justification. Unfortunately, the writers of these tracts have misunderstood the cognitive science behind those statements. It is difficult to read things when you don't understand what they are about. But it does not follow from that, that the solution is to ram that knowledge down kids' throats and then have them read. It is much more clever to have them read about what they know and to gradually increase their knowledge through stories that cause them to have to learn more in order to make the stories understandable to them. In that case, the learning is in context and thus more natural.

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Rule #3: Teach practice first, theory and facts second (if you must teach theory and facts at all). It is the rare course that starts with, let's build this now. Courses that start like that usually hold the students' interest, however.

Now let's move on to the next mistake.

Mistake #4: Thinking that students are not worried about the purpose of what they are being taught

When students ask what use algebra will be to them, they are told they will need it later. They are told this about any number of subjects that they are forced to learn in high school. The problem is that subject-based education is never about the potential use of those subjects. Those were the subjects at Harvard in 1892; that is the only answer that is true about why students are being forced to learn them. No one gives that answer. In fact, very few seem to know that answer.

Students have the right to know why they are learning something. "You will need it later," is usually a lie, so we need to stop telling them that. And, we need to think about what real reasons there are to learn something. If we cannot find those reasons, we really shouldn't be teaching the subject. But, of course, I don't think we should be teaching subjects at all, so my view on this should come as no surprise.

Rule #4: Don't teach anything unless you can easily explain the use of learning it.

Let's look at the next mistake.

Mistake #5: Thinking that studying can replace repeated practice as a key learning technique

Practice makes sense. When studying and homework mean practice, then they are good things. But rarely is that their intent. Unless, of course, we are talking about practicing test taking, which makes sense only if good test scores are the goal. I realize that good test scores are, these days, the goal in our society, as one would expect in any subject-based education system.

So here is rule #5:

Rule #5: No homework unless that homework is to produce something.

Now let's have a look at mistake #6.

Mistake #6: Thinking that because students have chosen to take your course, they have an interest in learning what you plan to teach them

Professors who typically teach courses that students have chosen voluntarily to take generally are under the illusion that students have come to the course hoping to learn what they intend to teach. Nothing could be further from the truth. Unless you are teaching human sexuality or how to get a job, or abnormal psychology, you generally can expect that students have very little interest in the content you are about to share and a great interest in the grade you eventually are going to give them. The reason for this is simple enough. Professors are teaching a subject.

Subject, in the university world, is a euphemism for profession. The profession of English professors is something other than teaching English—it is being a professional in some subspecialty in literature or some allied field. Similarly, a professor of psychology has an area of research within psychology that is his real profession. When a professor teaches, he is teaching how things work in his profession and he is teaching the basics of being in that profession. The percentage of undergraduates in a class that actually want to enter the profession of the professors is very small. Most have no intention whatsoever of entering the profession of the professors. So, they recognize instantly that what they are learning is very unlikely to be of use to them in their later lives. Some take it seriously anyway and some don't. But for the most part students really aren't much interested in what a professor is teaching.

They don't listen and they don't do what you ask them to do. Why not? They may be lazy, but that isn't the real reason. It may be true that they are taking four other classes, but that also isn't the real reason. The real reason has to do with the inherent value of work, which is one of the real issues in the transformation from subject-based education to cognitive process-based education. Students can feel, rightly, that they have read enough Dickens or have solved enough equations

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to satisfy the teacher or at least to satisfy their own needs in these areas. The problem is, as I stated originally, that learning starts with a goal and that the students' goals may not be the same as the teacher's goals. Since the students have no Dickens-related goal, and actually have a teacher satisfaction goal, they simply have misestimated what will satisfy the teacher.

Now let's consider real goals. Students do not stop driving a car because they are tired even though they haven't arrived where they are going. They do not fail to ask out Mary Lou on a date because they got bored talking mid-sentence. They do not give up on hitting a baseball mid-swing or midway through the game. People put in the effort required when they are working on truly held goals. Subject-based goals are almost never truly held. But cognitive process goals are nearly always truly held if the student is working on real things. If school wants to deal with artificial things (flying an air flight simulator instead of a real plane, for example, in order to learn to fly), then those artificial things need to feel very real and be very motivating.

Rule #6: Try teaching students things they actually may need to know after they leave school.

Here is mistake #7.

Mistake# 7: Correcting a student who is doing something wrong by telling him what to do instead

This one seems really weird. Wouldn't you tell someone to do things differently or what went wrong when you see them making a mistake? Most of us would because this seems a reasonable thing to do. It just isn't a reasonable thing for a teacher to do. A teacher needs to help a student think about what went wrong as opposed to telling him what went wrong and how to fix it. What do you think happened? Why did it happen, do you suppose? What could you have done differently?

Why does this matter? It matters because self-generated explanations are remembered more easily than explanations that we are told. It actually is quite difficult to remember anything you have been told. It is much easier to remember what you yourself have thought up, in part because you probably spent some time doing it, considered

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alternatives, and finally decided on an explanation, and then perhaps you tested that explanation another time. A self-generated explanation is a hypothesis, and hypotheses that we have come up with ourselves serve as the basis for learning. We tend to remember what we ourselves have said and thought more than we remember the words of others.

Rule #7: Help students come up with their own explanations when they have made a mistake.

Here is the next one.

Mistake #8: Thinking that a student remembers what you just taught him

I can't tell you how many times I have said *X* in a lecture or discussion only to be asked why I believed *not X*. Why does this happen? People really don't listen. They are not being annoying. They really can't easily listen. There is so much going on in their own heads while you are talking that it is remarkable they hear anything of what anyone says to them. Teachers live in a world where students are worried about the perceptions of their friends, events at home, and a million other things that have nothing to do with what a teacher is saying. A teacher simply cannot assume that a student will remember what he was just told. In any case, a teacher shouldn't necessarily be telling students the truth.

How could telling a student the truth be a bad idea? When telling is about facts, it is certainly a fine idea. But remember, I do not think that it is the job of a teacher to tell students facts. A teacher's primary responsibility is to get students to understand the world better and to help enhance their capabilities. Neither of these things happens through a teacher telling a student anything. Comprehension is an internal affair, arrived at by thinking. Ability comes from practice. Neither comes from a teacher. What a teacher can do is to encourage students to take on more and thus enhance their capabilities, or think more and thus enhance their comprehension. This means that telling a student a fact that he needs just makes it all too simple. Figuring out what you need is the real issue. Confirming what a student has discovered is a fine idea, but even that isn't always a matter of telling the student the truth. A Socratic teacher might deny what he knows is true

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in order for a student to defend a point of view and learn to be convincing. A teacher might fail to praise a student, even when she has succeeded, because the student should know that she has succeeded in any case. I am not suggesting that teachers never tell the truth, only that it isn't necessary to do it all the time.

Since coming to one's own conclusions is mostly how we learn, the real job of a teacher is to force students to come to sensible conclusions by confronting what they already believe with stuff that is antithetical to those beliefs. A confused person has only two choices. Admit he is confused and doesn't care, or resolve the confusion. Resolving the confusion entails thinking. Teachers can encourage thinking by making sure students have something confusing to think about.

Rule #8: Never assume that a student is listening to what you are saying or that what you are saying really matters.

What I have been arguing so far amounts to defining what I call *Socratic apprenticeship*. Learning by doing is facilitated by a good teacher, but that teacher has to be around when needed and has to know what to say and what not to say that will help the student think harder. The teacher doesn't provide answers—he just helps students find out where to look for answers and how to know whether they found the answers. Our current education system does not encourage teaching and learning to work this way, and I assume neither did the system that Plato was criticizing when he started to talk about learning by doing and Socratic teaching in the first place.

But something important has changed. We can now create apprenticeships online. It is possible to learn by doing in a simulated world set up on the computer that provides for human help as needed. We have been building what we call story-centered curricula for about 10 years now. Students learn within the context of an intense year-long experience where they do only projects and produce deliverables that are commented on and improved upon by interaction with a Socratic teacher. We have produced them for masters programs at various universities, for high school programs intended to replace what is there now, and for corporations when they wish to create really effective training.

These curricula change how we learn and how we teach. Both of these need to be reconsidered in the wake of the disaster of an education system that we have created.

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In summary, a good teacher does the following:

- never tells a student anything that the teacher thinks is true
- never allows himself to be the ultimate judge of his own students' success
- teaches practice first, theory second (if he must teach theory at all)
- does not come up with lists of knowledge that every student must know
- doesn't teach anything unless he can easily explain the use of learning it
- assigns no homework unless that homework is to produce something
- groups students according to their interests and abilities, not their ages
- ensures that any reward to a student is intrinsic
- teaches students things they actually may need to know after they leave school
- helps students come up with their own explanations when they have made a mistake
- never assumes that a student is listening to what he is saying
- never assumes that students will do what he asked them to do if what he asked does not relate to a goal they truly hold
- never allows "pleasing the teacher" to be the goal of the student
- understands that students won't do what he tells them if they don't
  - understand what is being asked of them
- earns the respect of students by demonstrating abilities
- motivates students to do better and does not help them to do better
- understands that his job is to get students to do something
- understands that experience, not teachers, changes belief systems
- confuses students
- does not expect credit for good teaching

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CHAPTER 13

How the Best Universities Inadvertently Ruin Our Schools

We have met the enemy, and he is us.

—Walt Kelly

It should come as no surprise to readers of this book that I never really liked school. I endured it. I didn't have the option to quit—an unthinkable idea in my household. In the end I even wound up with a Yale degree (all right, an honorary one—but it is printed in Latin). Truth be told, I did get a real Ph.D., but that was more a testament to my figuring out how to work the system while avoiding the draft, than it was a testament to my scholarship or academic prowess.

I became a professor, an unlikely job for someone who hated school, and I became an unlikely colleague who worked with people who, by and large, loved school. I spent 35 years of my life as a professor at the best universities in America, and still I hated school.

Somewhere in the middle of my academic career, about the time that my kids went to school, I began to think about how learning worked. (I was trying to develop computers that learned.) Since my kids also hated school, I began to wonder about why school was the way it was and why it really had so little to do with learning as I understood it.

Eventually I realized that I was part of the problem. I readily had found employment in a world that let me think about interesting problems all day and work with really smart graduate students. To pay for this life of the mind, I was required to teach every now and then. I never really liked teaching for exactly the same reason I didn't like being on the other side of the classroom. I didn't get the point. I talked. Students listened or at least faked listening, and then there were grades to be given out based on how well they actually had been listening. I didn't like this game any more as a teacher than I had

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liked it as a student. Who said that listening to what I happened to be talking about was an important thing to do? And, who said students should be graded on how well they had listened to whatever truth I was espousing? What if I was saying nonsense? I didn't think I possessed a direct line to the truth any more than I had thought that my own teachers did. The system didn't make sense to me as a student and it didn't as a professor.

But it was a very easy job. And the pay, despite what people think about professors' salaries, was pretty good.

How hard was this teaching obligation? At Northwestern I was required to teach one 3-hour- a-week course for 1 quarter every other year. This came to about 36 hours of work in 2 years.

Yes, really.

So, how was I part of the problem? Actually my light teaching obligation is the tip of the iceberg of an enormous problem. It brings up the question of how and why that light load works for a university, the answer to which sheds light on what is wrong with our school system.

How do the economics of a university work such that a professor can teach so little? That is an important question. But an equally important question is how it is that a professor, who is after all, in the mind of the public at least, a teacher, teaches so little and is happy about it?

People used to ask me, when I said that I was a professor, what I taught. I would always laugh. I would suggest that they ask me instead what I was a professor of, which was, of course, the only relevant question. I didn't teach much and when I did teach, I hardly taught computer science, which was actually what I was a professor of. I usually taught my view of how the mind worked. Sometimes I taught how education needed to be fixed. But, anyhow, as I have said, there wasn't all that much teaching going on in my life. Sometimes I taught more often than required of me, simply because I was feeling guilty. The rules said I didn't have to teach much but there were students, usually graduate students, who were thinking that as they had attended this university in part to interact with me, at least I should teach a course that included them at least once. So I did it because I felt guilty, not because anyone higher up in the university cared what I did.

I remember a Yale undergraduate who wanted an appointment with me. He was screaming in the halls, after he had been told that he could see a graduate assistant instead of me, that he had paid $20,000

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a year (or whatever the tuition was at that time) to attend Yale and he damn well was going to see me. I did in fact see him because he had a point.

Professors are hard to find. There are many reasons for this. The first is that if no one makes them see undergraduates, so why should they? The second is that from long experience most professors have come to understand that when an undergraduate wants to see them, there typically is one of two motives. Either the student wants to argue about a grade he or she received, or wants to engage the professor in a conversation whose point is that the undergraduate is really a great guy or gal and will be counting on a recommendation down the road. Neither of these conversations is any too fascinating to professors so they usually make themselves hard to find.

The funny part of this story is that the student who was making the fuss had neither of those issues. He was exactly the sort of student professors very much want to see. He wanted to become a professor in my field. This is exactly who a professor wants to meet with. The conversation with him didn't start out about that exactly, but it was easy to see that he had real issues he wanted to talk about, science issues, the kind professors wish were on the mind of every undergraduate but rarely are. This student did in fact become a professor, the ultimate success story for the professor who guided him there. And, no surprise, he treats undergraduates who want to see him the same way I treated him.

There is a naïve conception on the part of students in a top university that their needs matter to the professors of that university. But the top universities are not structured in such a way as to reward professors who care deeply about students. If a young assistant professor spends too much time with undergraduates, there usually will be some wiser head who will counsel him against this behavior. Assistant professors must be concerned with getting tenure. Having the students like you has next to nothing to do with tenure at the top universities.

No one higher up in the administration of the university cared much about how much I taught. "Why not?" you wonder. To answer this, one has to understand how universities really work, why they work that way, what game they are playing, and who wins and who loses. The answers to these questions, well known by anyone in a top university, are, somehow, completely unknown to the general public. Outsiders don't ask how Yale works. They ask how they can get their kids into Yale. And therein lies the problem.

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As long as the customers keep coming, as long as people will do anything to get their kids into Yale, Yale will not have to change. Now bear in mind that going to Yale isn't such a bad experience. This is not my point. But Yale's attitude (and every other top university's attitude) toward what those universities are inherently about is seriously harming the education of every high school student and almost every college student in the country. Yale doesn't know that it is doing this.

The faculty of Yale didn't wake up one morning and think that destroying the American education system would be a good idea. They never think that subject-based education is a bad thing. They are professors of subjects, after all. It makes sense to them.

Most of the Yale faculty doesn't think for even a minute about the U.S. high school system, or the community college system, or the thousands of other colleges in the United States. Yale professors are thinking about their research, ideas, and projects. Yale administrators are thinking about making Yale work better and about money and prestige issues. They are not thinking that the subject-based education that is the basis of the university structure has filtered down to high school for no good reason. They think that there is a good reason: to prepare high school students for college, namely to make the professors' lives easier when the students arrive at college.

They do not know they are killing education with their subject orientation. But they are, just as surely as if they had a plan to do so and were working on it on a daily basis. And, the parents who just must send their kids to Yale are regularly giving them the power to continue doing just that.

People who do not live and work within the confines of a great university imagine that professors are basically teachers, like high school teachers but more intellectual. They do not understand the collective mindset at a place like Yale, a mindset that the Yale faculty, for the most part, is perfectly happy with. They do not understand why asking what I taught was a funny question. They do not readily get, if teaching isn't a professor's main concern, what exactly his concerns would be.

To explain all this requires looking at the life of a typical Yale faculty member and beginning to understand the world in which he lives. We must begin by understanding the aims of the university itself. Universities are employers, after all, and professors, like any other employee, worry about what their boss thinks of them. Curiously,

however, professors don't really have bosses in the traditional sense. I remember the provost of a top university complaining to me that with professors everything is a la carte. The provost is the guy who runs the university. What he meant was that he could not ask any professor to do anything without the professor asking what he would get in return. The traditional sense of boss is gone, of course, when the boss can't fire you.

The real bosses in the university system are your colleagues.

Huh?

Your colleagues can't fire you. But this is what they can do. In order to hire a new senior faculty member at Yale, we actually had to write letters, at the beginning of the process, to all the important faculty members around the world in the subspecialty in which we wanted to hire, asking them to rank the top ten people in the world in that subspecialty. If the person we wanted was not on that top ten list, we would not be able to hire them without proving why we couldn't get one of the people in the top ten and why we so desperately needed someone who clearly wasn't that good.

Top universities are caught up in a game they can't get out of that has two very bad results. The game is the superstar-prestige game. Top universities want to be number one. They want this very badly. University administrators worry about this on a daily basis. All hirings revolve around this issue. All professors worry about their status in the academic world at large. It is the coin of the realm in academia.

Although it does not obviously follow from this, one effect of this game is less than stellar education for undergraduates. And, incidentally, this game also has a disastrous effect on the nation's high schools. This is not at all obvious to professors and to the universities for whom they work. To understand this, we need to first see what professors do and how they think about what they do.

I will start by telling a story about someone I barely know. He is a professor of aerospace engineering at the University of Washington, which is in the top tier of state universities. I met him because I was working on creating a high school aerospace curriculum that I hope one day will replace some of what is now in high school for those interested in engineering. I asked Boeing to host a meeting to design this curriculum and they agreed. They invited some of their engineers as well as this professor, I brought some of my people, and we began to design a series of projects that would take students with no knowledge

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of engineering and after a year allow them to work on designing a 787. Such a project-based, real-world curriculum is, in my mind, an important improvement on the way things are done now in school.

At the very beginning of the meeting, this professor said that he hoped the outcome of this high school curriculum redesign meeting would be a curriculum that taught math and science better because the average student at the University of Washington that he encountered had very weak math and science skills.

This was not my intent at all and I told him so. I was hoping to allow high school students to have a year-long experience of actually doing engineering so they could decide whether that interested them or at least make use of some of what they learned in their later lives. As far as I'm concerned, there is too much math and science in high school now and I told him so.

Since no one ever says things like that, he was quite shocked. I asked him, since he thought entering college students who wished to study aerospace were deficient in math and science, why he didn't think it was his obligation to teach it to them? He replied that this was the duty of the high schools. His position then was that even though less than 1% of college students would study aerospace engineering, nevertheless every student in the country should be made to learn the math and science they might need just in case they might study aerospace engineering.

Of course, this is hardly a unique position. In fact, this stance is exactly the one in place in high schools today. Just in case you some day might need it, we will teach it to you.

What is the reasoning behind this point of view?

What is really going on here relates strongly to the teaching requirement issue I mentioned earlier. I had a light teaching load. This man certainly teaches more often than I did. To see what his load was, I looked him up on the web. Here are the courses he was teaching in 2007–08 as I wrote this:

- A A 430 Finite Element Structural Analysis
- A A 432 Composite Materials for Aerospace Structures
- A A 532 Mechanics of Composite Materials

I had guessed what kinds of courses he taught before looking him up. The man is about my age, which means he has seniority, and he is

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obviously respected by Boeing, so he is a senior and successful man in his field. This means a small teaching load since the best professors teach the least. Three semester-long courses in a year is a light load at a big state university.

You might wonder, as an outsider to the ins and outs of the university, why the best professors teach the least. You also might wonder why I knew the types of courses he would teach and what I mean by that. I will explain.

To start this explanation, it is important to understand why professors are "rewarded" with light teaching loads. (Note the word *load*. This is the normal way this is discussed in a university.) I was given an extraordinarily light load at Northwestern for two reasons. One reason was that universities, like baseball teams, recruit so-called "superstars" (yes, that is how they are referred to in the university) from competitors. So Northwestern had to beat Yale's offer in my case. At Yale I taught one semester-long course per year, so Northwestern simply made me a better offer.

The reason both of these universities would even consider such a light load is that I earned money for the university. As I used to tell my children when they asked "why" questions, in the end it is usually about money.

I was recruited by Northwestern (in 1988), but I was really being recruited by Andersen Consulting. They offered Northwestern (that is, they offered me if I came to Northwestern) $30 million (over a 10-year period). Yes, that's right, $30 million. I think you can see that Northwestern didn't really care what I taught or when I taught it. They wanted that money. And, they also wanted the prestige.

Before I go too much further, I need to explain the prestige thing because it is very important. In fact, the prestige issue for professors and universities is precisely the root of the problem in our education system. This will take some time to explain, so let me start simply for now.

When Harvard plays Yale in football, they are battling for prestige. But the battle may not be on the field exactly. The real battle is in how powerful and important the alumni who attend the game have become and how big their respective endowments have become and who has the best chemistry department or business school. It is a real battle. The battle is for reputation. And, although it may seem silly to take this battle seriously, it is taken very seriously. There is no World

Series that determines the winner. The real determination is made by newspapers, or parents who want their kids to apply there, or potential donors. But the battle is real enough.

This battle was dead serious before *U.S. News and World Report* started publishing annual rankings. Now, it is the basis of how the university functions. When the current president was recruited at Northwestern, he essentially was told that his job was to get Northwestern into the top ten (in the *U.S. News* rankings). Northwestern was ranked 12th or 13th at this time. In his first year he succeeded. Why? Because Northwestern's football team won the Big Ten title and went to the Rose Bowl. Of course, he had nothing to do with that. But the following year applications doubled (or something like that) and that is a statistic that *U.S. News* uses, so presto, we were number nine. It didn't last. Neither did it make sense.

Recruiting me was like winning the Rose Bowl. Well, all right, not really. But a member of the Board of Trustees actually did say to me when he met me: "It's our star quarterback." I brought in money and prestige. It is natural to wonder who actually got the money that Andersen offered and what was done with it and why it was given out, and, while we are at it, what exactly it was I did all day if I didn't teach.

First the university's share. Every dollar of that $30 million went into Northwestern's bank account. Then they let me spend it according to certain rules. The first rule is called "overhead." The university charges an overhead rate on all contracts. The actual percentage varies and one of the first things I had to negotiate with Northwestern was how much their take would be. I don't remember exactly now, but they got about 30% of what I brought in. So, about $9 million of this money went into Northwestern's pocket. Do you see now why they didn't care how much I taught? They just wanted me there and they wanted that money. By the way, they also got the interest on all the money.

They also got the prestige. I set up a new institute that became instantly well known and was something the university could brag about. The Institute for the Learning Sciences was something unique. Northwestern had one and no one else did. Moreover, I might (and did) raise even more money for my institute. More overhead money. Yippee!

What did I do with the money? Mostly what you can do with this money is hire people. If you have a research agenda, something you want to build or accomplish, you will need help. If you want to build a rocket ship that no one has ever built before, you will need to

hire folks who can contribute. I was trying to build educational software but the principle was the same. I hired programmers, researchers, assistants to do lower level work, video staff, artists, and, of course, graduate students.

And, now you know what I did all day. I managed this enterprise. Eventually my institute had 200 people working in it. I did what any person in charge of 200 people does. I set the direction and checked on progress. Also, I wrote books and thought deep thoughts. This is what any professor does who brings in grant money. I was just doing it on a larger scale than most.

All of this is about winning the prestige game. Any university wants pre-eminent professors. Universities want the best faculty so their name is mentioned a lot, so they get applications from students, attention from the media, and more grant money. That is what universities do. Teaching? Well, how exactly does teaching fit in with all that?

It really doesn't. Most professors agree that the university is a lot nicer place when there aren't all those undergraduates around. From May to September New Haven was an idyllic place. Smart people, good weather, interesting conversation. Then in September, thousands of young people, making a racket and expecting to be taught. But, therein lies the problem. Are students really expecting to be taught?

It doesn't take very long for a professor to learn that those brilliant Yale students, the ones who killed themselves to get into the place, may not be there solely to enter into the life of the mind. While everyone is thinking great thoughts and doing great research over the summer, professors manage to get themselves believing that the job of a professor at a great university is to be an intellectual. What they forget easily enough is who is paying the bills. And, they forget the real agenda of those who are paying the bills. They are reminded soon enough.

Students want courses to be easy, not bother them too much with work outside the classroom, and help them get a good job. Of course, I am oversimplifying here. Many students attend Yale to learn what it is that you, the professor, really know and want to teach. In 15 years at Yale I met a number of them. I remember their names because there weren't that many. We can hope that all professors have met their share of that type of student.

Most college students are 18-year-olds who are on their own for the first time. They are more interested in exploring themselves and their new freedoms than they are in working hard at intellectual

pursuits. Every university has underground lists, written by students, about courses that are easy or professors who readily give good grades. The real agenda of the majority of students is to take school just seriously enough to graduate. If you offered them a diploma after 1 year, most of them would take the deal.

This all brings me back to our aerospace friend. Why does he want high schools to teach more math? Because he doesn't want to teach it. Teaching undergraduates becomes pleasurable at precisely the point where you can teach the very courses this man teaches. He is teaching highly technical courses, and, it is safe to assume, the students who are taking those courses are there with serious intentions. They want to become engineers and they want to know what he knows. So he may well enjoy teaching them. But he certainly would not enjoy teaching them calculus. There is a big difference in the experience of teaching when you are teaching people who plan on working in your field some day and when you are teaching a required course that students wish they weren't being made to take.

But why does it matter what this man enjoys teaching?

In the ideal university, the one professors at top-tier universities would have if it were possible, professors, who consider themselves primarily to be researchers in very specialized subfields, would teach only work that directly related to their actual research or was important for preparing future researchers in their field.

Professors at Yale get to be professors at Yale because they are either potentially or actually the best in the world at something. While this might not actually be true, it is certainly supposed to be true. When a professor is proposed to be promoted (or hired for the first time) as a full professor at Yale, the chair of his department must address a meeting of all the other chairs and high officials and explain why the professor in question is indeed the best in the world at what he does. To do this, the chairs often have to define what he does extremely narrowly to have it be at all credible. Isn't there someone at Stanford or Princeton who is just as good or, perish the thought, even better than the candidate you propose? There better not be or this candidate won't get voted in. So, somewhere in every professor's mind is the idea that he or she is the best at something or for assistant professors, soon will become the best at something.

Under this kind of pressure, and this kind of egotism, a professor's first and foremost concern is attaining and maintaining that exalted

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status. Teaching future professors in one's own field helps maintain that status, so graduate students pursuing Ph.D.s are quite often taken very seriously. Teaching graduate seminars is intellectually stimulating, may help with one's own research, and is therefore worthwhile to do. But undergraduates are a whole different story. Very small percentages of them actually will become researchers in one's field. Professors are in the fame game. They worry about the prestige of their department and themselves. They care about this because they won't attract high-quality Ph.D. students unless they maintain that prestige. Undergraduates do not figure into this equation. Except they do pay the bills.

So professors have to teach them. And, someone has to teach those damn introductory courses that typically have hundreds of students in them. Why do they have hundreds of students in them? Because no one wants to teach them so making the sections as large as possible means fewer professors will have to teach them. And, why does our aerospace guy want high school to teach the math his students need? Because he certainly doesn't want to do it. He wants to teach esoteric courses about composites, which is his field. Teaching basic math would be worse than teaching Introduction to Aerospace. A great deal of work and no enhancement to prestige at all. And, there is a bigger problem. He can't teach math because the structure of the university doesn't allow it.

Math is taught by the math department. If everyone had to learn math, there would have to be an awful lot of math professors. While that sounds OK, it really isn't possible. Remember, at top universities everyone has to be a superstar or close. Math isn't that hot of a field. There aren't large numbers of people wanting to become math professors, nor is there a great deal of funding for math research. Remember, without outside funding as a possibility, a top university isn't going to want to create a big department. You get big departments, and lots of professors, only in fields that pay for themselves through outside funding. So math has to stay small. Solution—make sure math is taught in high school.

This solution makes everyone in the university happy. And, it shouldn't be a big surprise that the original idea of requiring algebra of high school students came from the president of Harvard and the chairman of the Princeton Math Department (in 1892). It has always been in the university's interest to push teaching the basics that

are needed in college into the hands of the high schools so that the university professor's life is easier and involves less teaching that he doesn't want to do.

So, of course, professors want high schools to do a better job. The question is why high schools should care about what universities want at all. High schools have their own problems, or should have, but they have been convinced to ignore their problems and focus on the problems that universities have.

Parents demand that high schools prepare their kids for college, which really means help them get into college. Gradually the high school curriculum has become one giant entrance test for college. The idea that someone might not want to go to college seems very odd to most people. So, if the colleges say more math, then more math it is. But colleges are not saying more math in good faith. They are just having high schools teach what they don't want to teach.

But there are about 3,000 colleges in the United States and only about 50 top-tier research universities. What Yale needs may not be what the other colleges need. Why, then, is the tail wagging the dog? Yale says jump and everybody asks how high. Yale sets the rules. Yale says 3 years of math, and 3 years of math it is, even though higher math will not, or at least should not, come up in most college classes.

Does Yale know it is doing this? Do the faculty understand that by requiring that the high schools teach mathematics, they are causing massive numbers of dropouts and making learning a very stressful experience for most high school students?

I think the answer is no, but even if they did know it, they would do nothing about it. They have a university to run and they simply cannot change the way they operate. I can explain this with a story, this time from Columbia University.

I once had the opportunity to create courses for Columbia University that would be put online through a business I started that was funded (and then abruptly terminated when the dot com boom busted) by venture capitalists. I interviewed various professors at Columbia in order to decide which courses to put online. I wasn't trying to simply copy the courses they had but was trying to build learn-by-doing versions of them that would be more engaging than the usual lecture course and would try to teach real-world skills rather than the usual stuff one gets in an introductory course.

We decided to build an economics course and talked at length with the chairman of the Economics Department. We decided to simulate

the experience that this man had had working as an economic advisor in the White House. The students played that role in the simulation and learned how economics is used in the real world.

All of this is really beside the point, however. I learned, during these conversations, that at Columbia calculus is required in order to be an economics major. I wondered about this, since the courses we were building never had any complicated math in them, so it seemed that calculus wasn't something that came up regularly in real-world economics.

I asked and was told that my observation was right and that calculus was required in order to ensure that there wouldn't be too many economics majors. As an insider in the university world, I understood this remark, but it needs some explaining for outsiders.

Columbia doesn't have an undergraduate business major. And, in New York City there are a lot of students interested in business. Columbia and other Ivy League schools think that business isn't an academic subject, so students shouldn't learn it until they go to graduate school. Columbia does have a well-respected business school, but, as I pointed out, no one really wants to teach undergraduates so they certainly aren't lobbying to teach them. (This is also true of medical schools and law schools and it is why you never see courses for undergraduates in those fields despite the evident interest of the undergraduates.)

So, potential businesspeople at Columbia need to major in something and economics seems to them to be a reasonable second choice. (I am not really sure that it is a good choice but these are 18-year-olds making these decisions.) Thus, the Economics Department is flooded with potential majors. This seems like it would be a good thing, doesn't it? Students want to study what you teach. Isn't that good?

Well, not really.

Let us assume we have an economics faculty of 20 people, each of whom teaches three courses a year. So we can offer 60 courses. Sounds like a good number. But this has to include graduate seminars, and the faculty will be lobbying to have more of these and more advanced courses where they can teach their own specialty, as I have said. But majors need courses too. They might need 20 or more. This doesn't leave a lot for introductory courses unless the department runs enormous lecture courses that have hundreds of students. Now departments know that such courses are pretty awful things and they try to keep them down to a dull roar. But if you have hundreds of students wanting to take your courses, and you were set up with just enough

faculty to handle 60 courses with fewer than 20 students in each class, you have a problem. Multiple sections of courses require multiple faculty and maybe even, God forbid, heavier teaching loads.

Simply put, if there are too many majors, all the specialty courses will overflow and you might need twice the faculty to handle them. The university is not going to let you hire twice the faculty in order to handle them. Why not?

Tenure is why not. Once you hire tenured faculty, they stay forever. Tenure is another one of those ideas that sounds a lot better than it is. One of its downsides, and it has many, is that you can't easily hire new faculty when you need to. There may be a jump in economics majors this year, but who is to say that this will be true next year? Universities move slowly.

So, the current economics faculty would have to teach more courses. They simply do not want to do that. They want to go back to their offices and do research and write books and consult with the government or big business, should they call.

Voila!

Calculus.

That will keep the little buggers out. If that doesn't work, advanced calculus. Who cares if those courses have little relevance for economics? They can always say it might come up some day. (It might.) Or they can say it teaches rigorous thinking. The real reason is to keep the numbers down. This is also why biology and chemistry are required courses for pre-med students, why statistics is required for psychology majors, and so on. Most departments will not admit to this, but that's why those things are there.

You never see this kind of thing in departments that have too few students. Too few students is the kind of problem that gets your department shut down. So, linguistics departments, which were started when linguistics was in fashion in the 1960s, are always under threat of shut down. They won't be requiring calculus. But they would if their situation changed. Instead, what they are doing is trying to explain why linguistics is calculus.

Huh?

When I arrived at Northwestern, undergraduates were required to take a math course in order to graduate. There could have been any number of reasons for this requirement—none of them having to do with interests or needs of the undergraduates.

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In fact, diverting from that story for a moment, my secretary, who never went to college, insisted that her daughters go, so one of them found herself in an art history course that she hated and complained to her mother who in turn complained to me. Why does she have to take art history? She is a business major (at Hofstra), for God's sake, said my secretary.

Obviously, I replied, there are art history professors who are worried that no one will take their course and they will be fired (tenure doesn't apply in that case as tenured faculty can be fired if their department is shut down), so they have lobbied successfully to require it. She thought that was stupid and so do I. Now back to Northwestern.

Clearly the mathematics professors at Northwestern were similarly concerned. Of course, they made their argument, the same way the Hofstra art history professors did, one would assume, about these courses being necessary for a liberal education, but the real argument was about saving the department and everyone knew it.

But at Northwestern, this math argument had been made a long time ago. What was new was that linguistics, at Northwestern, had been classified as a math course! The reasons are clear enough. No one was taking linguistics at Northwestern and the linguists were scared. How they won the argument that linguistics was math (and thus an alternative to the required math course) is anybody's guess. Just remember that none of this is being done with the interests of the students as the real agenda item.

If you believe, as universities do, that the most important thing you can do as an administrator is recruit superstars to make your university great, then there is a consequence to all this. The students suffer. At first this seems an odd idea. How could a student be harmed by recruiting a superstar? Well, it depends on the university.

At MIT, where students are different than they are at Northwestern by quite a bit, there are a number of superstars that I know quite well. Two of them, whom I will not name but are about as famous as a professor can be, are people I have heard lecture many times. I have never understood what they were talking about in any of those lectures. Now, bear in mind that I know their fields very well so I should have been able to understand them. Also, bear in mind that I was a terrible student, which means my attention fades fast when I am bored or irritated.

Since I know these two men well enough, I can tell you that neither is particularly worried about being understood. They have been

acclaimed by one and all to be brilliant, and many brilliant people think that if you can't understand what they are thinking about, then it is your fault not theirs. They are talking about complex issues that interest them, and you should be able to follow along, and if you can't then you are a dope.

This works at MIT, sort of. No MIT student happily admits to not understanding what the professor is saying. They all muddle through as best they can and are usually awestruck by even being in the presence of these great men, much less being able to take a course from them. Understanding what they said, or, worse, actually being able to make use of what they said, seems unimportant by comparison. You would take a course given by Einstein, wouldn't you, even if you didn't understand physics? That is the attitude.

This attitude works at MIT. But it fails miserably at lesser schools.

I took advanced calculus from a superstar when I was an undergraduate. I didn't understand anything. I was a math major, but that course caused me to lose interest in math and start thinking about other things. I went to see this superstar and asked him for advice. We had a great conversation. He was a very smart guy. He pointed me in a direction that helped me make some important decisions. As a one-on-one advisor he was great. But the system made him teach, which really wasn't something he could do very well.

As luck would have it, years later when I was chairman of the Computer Science Department at Yale, he was one of my faculty. So, in a sense he wound up working for me (to the extent that any faculty member actually works for the chair, which is really not the case).

He was a great man. He inspired many a graduate student to become a professor. He was fun to talk to. But he couldn't teach at all. At Yale we made sure that he taught only specialty courses, which was fine with him. What he was doing teaching advanced calculus that year long ago is anybody's guess. My guess is that as he was the chairman of the Math Department at the time, either he got stuck with it because there was nobody else or he was trying to prove a point in order to induce senior faculty to come down from on high and teach the basics.

Either way it was a terrible idea.

Prestigious universities that recruit superstars are not, at the same time, recruiting teachers. They are just hoping someone can and will teach. But no one cares that much.

I once had dinner with a man who was on the Board of Trustees of the University of Illinois. I asked him how he liked being on the board

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of a fraudulent institution. He reacted the way you might expect and demanded an explanation. I asked him if he thought the average student attending the University of Illinois was going there because she figured after graduation she would be able to get a job.

He agreed.

I then asked whether job skills were in fact taught to the majority of students there and whether the faculty, by and large, actually had ever worked anyplace but a university.

He laughed.

It is OK that Yale hires only intellectuals and only the best of the best because Yale is not a state-run institution and Yale can do what it wants. No one is making anyone go to Yale. Caveat emptor.

But a state spending a great deal of money on its flagship educational institution ought to know what it is getting.

This is what it is getting—Yale.

There are no faculty members at the University of Illinois in any mainstream department (I don't mean agriculture, for example) who do not consider themselves the equal of, and in some cases better than, their Yale colleagues.

When I went to Northwestern, I was given the right to hire a variety of faculty in a number of disciplines that related to learning. When you recruit faculty, you mostly consider how your institution might look better to someone at another institution. So, Northwestern doesn't recruit from Harvard or MIT (or Yale!) very often because Chicago doesn't seem a more appealing place than Boston to an academic and Northwestern isn't a step up. And, Northwestern doesn't recruit from California in general, for the same reason.

So, it's the University of Illinois!

I recruited heavily from Illinois because Chicago looks more appealing than Champaign-Urbana to most people, so I had something to offer, and the faculty there had already bought into the idea of living in the Midwest. Moreover, in the academic world, the University of Illinois is considered to a top-ranked institution with a faculty every bit as good as Yale's, maybe better in some departments.

So, why is this bad?

It is bad for the students of the state of Illinois who worked hard to get into the state's best university only to discover that its faculty think they are at Yale.

Of course, they know they are not at Yale, but they are competing in that world nevertheless. They also do research and publish and

work hard to be famous superstars. They are in exactly the same game as their Yale counterparts, so it follows that they don't want to teach either.

But the numbers are much bigger at Illinois. Classes are larger and faculty have to teach more classes. So these same people, who would readily move to an institution that didn't treat them like this, are stuck competing with their Yale colleagues and, at the same time, having so many more undergraduates to deal with.

Guess who loses?

And, I haven't even started to discuss the idea that most students at Illinois do not go there to become professors or intellectuals, or hobnob with the best and brightest. The faculty think they are (or ought to be) at Yale, but the students do not. The students want to get jobs 4 years later. Good luck with that. That is not what Yale is for.

I was told that explicitly one day, by the way. I had to give a short talk to entering freshmen at Yale when I was the department chair. The idea was to extol the virtues of majoring in the field represented by the chair. Each chair gave a short speech. Mine, as usual, was the shortest. Major in computer science—get a job. That was my speech.

I was booed.

I was booed by the freshmen, who by this time at Yale had been there maybe 5 minutes but had already absorbed the zeitgeist of the place. Yale was for thinkers not workers.

By the way, that was in 1982 or so. All our computer science graduates went to work at Microsoft in those years. There were lots of millionaire alums not too long after. (Presumably, not those who were booing.)

They wouldn't have booed at Illinois, and that is the point. Yale is not the problem unless you realize that it sets the direction for every other university in the country. It doesn't do this by itself and it doesn't do it intentionally. Nevertheless, it ruins the chances that Illinois graduates will receive a reasonably practical education that actually might get them jobs or teach them how to live in the real world.

So, we have created a system that values heavy intellectuals and gives them a place to do their thing. Is this bad? How could it be bad? It certainly isn't bad for the intellectuals. But it is bad for the students. Not necessarily for the students at Yale, although there are certainly unhappy students there. It is bad for the society at large. Students don't need to major in subjects unless they intend to become professionals in those subjects. Actually, they need to intend to be professional researchers in those subjects, since the faculty really don't know

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how to or care to think about their subject as anything other than a research area. Making a real living with what they teach is not on any faculty member's mind. But students go to college precisely because they think they will get a job afterward that college will have prepared them for. It just isn't true.

Teaching how to survive in the real world is simply not the job of an Ivy League professor. This is too bad because there are professors who really do like to teach.

One day I decided that I needed some news video from the major networks for a project I wanted to start. I called the president of Northwestern and asked him if he knew anyone at the networks, and he told me that the former president of one of them was now on our journalism faculty.

So I called him. He said he would help me but only on one condition. He wanted me to sit in on the class he taught. This was really an odd request, and especially hard for me to agree to given how much I hate classes and classrooms. But I really wanted that video.

Professors almost never ask other professors to watch them teach. One reason is that they usually aren't all that proud of their teaching and don't want to hear the criticism that inevitably follows. Also, it really isn't something they want to talk about even if they are good at it. It has minor value in a professor's world.

The class I attended was the most extraordinary I had ever witnessed. This former head of a network previously had been head of the news division. He had turned his class into an all-day simulation of a network newsroom. Students were charged with preparing and producing the evening news. They got their information from various sources that were used by the networks and prepared stories, played the roles of on air reporter, news writer, anchor, camera person, editors, and so on. They finished and went on air at 5.00. At 5:30 they watched to see what the networks had done that day and compared and judged their own success. The professor was there all day guiding them.

I thought this class was fantastic and said so. I then said it would be a loss when he left Northwestern in a couple of years. He said he had no intention of leaving, but I knew what he was doing would never be tolerated.

Why not?

Let me count the reasons. First, he was teaching doing and practice, and not theory and analysis. While the rest of the world knows that doing and practice is how you learn, this is the exact opposite of

how teaching occurs in a great university. (There are exceptions to this, of course. In engineering, agriculture, and even in journalism, practice does occur. But it always occurs in the presence of lots of theory.)

University professors are not practitioners. Usually they don't know a thing about how what they teach actually is used in the real world, never having been in the real world themselves, so they have created a culture where theories and ideas are considered to be more important than simply being able to do something. So one reason his class would have to go is that it inevitably would be seen as threatening to the other faculty.

Another reason that it threatens the other faculty is that it is a lot of work to do what he did. He was there all day. Professors teach 3 hours a week, 6 if they aren't superstars. No one wants to see a new standard of teaching created that is both practical and takes a long time to do. When would the professors do their research and write their books? This man didn't have that agenda. He just wanted to teach. There is no room for that in a top-tier university.

And, how would this class fit in a student's schedule? Students can't spend all day at something without missing those important required classes that meet 3 times a week for an hour. Totally consuming classes that take all day, and may even take all week, cannot possibly exist.

Two years later this man was gone.

It is actually very difficult to change the way a university runs, and this includes trying to change any aspect of how courses are offered or structured.

I learned this when I took on the job of building a new West Coast campus for Carnegie Mellon University. (By building, I mean designing its offerings, not its buildings.) As I am an advocate of learning by doing, in just the way our former network head was doing in his class, I decided that there would be no courses, only projects, and that each project would build on the one that preceded it. The administration in Pittsburgh let me get away with this precisely because there were no faculty hired in California and the Pittsburgh faculty wouldn't much notice what we were doing 2,000 miles away.

We had to lie to the registrar about what we were doing because courses had to be in parallel to make it into their system and we weren't offering courses at all. The projects had to be labeled as courses, but they varied in length (not every project takes the same amount of time). These "courses" ran in sequence not parallel, so we basically had to lie about it to get by the registrar.

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The students objected that there were no faculty around and were no classes, so they felt cheated in some way and asked why they had to show up at all. We replied that they didn't, since all the materials they needed were online anyway. The students were assigned mentors who were on campus, but after a while students interacted with them by instant message instead of walking down the hall even when the students were on campus. The students started out hating what we did and wound up loving it. These were students in master's degree programs and they were, in essence, simulating the jobs they were preparing for.

Even the faculty in Pittsburgh came to appreciate what we were doing in California. But you will never hear about it (except from me). Carnegie Mellon will never brag about it or publicize it in any way.

Why not?

What I did is very threatening. At one point the provost, realizing that since the program was online, in principle we could serve a lot of students, asked me whether I was going to put Golden Arches over the campus and say over a million served. Seemed a good idea to me. But not to Carnegie Mellon. We don't want to cheapen our brand name, the provost told me.

In other words, if hundreds of thousands of people had Carnegie Mellon degrees, how prestigious would such a degree be? These degrees were in computer science, a field in which Carnegie Mellon is number one or two in the world. But if too many people had these degrees, the university's prestige would go down, so whether or not this was good educational practice, and the certifying boards certainly thought it was, this was never going to happen.

I made the mistake of saying in an interview how well our experiment was going, and was told by Carnegie Mellon to stop doing that. It seemed that parents of undergraduates at Carnegie Mellon were calling and asking why, if this method was so preferable to the usual course-based method, it wasn't being employed in Pittsburgh? Since that could never happen—the professors would never allow it—I had to stop giving interviews.

As I write this, the learn-by-doing master's degree programs we built are still running, but no more will be developed at Carnegie Mellon. Eventually the ones I built will be shut down. The reason will be that they employ teachers who teach (as mentors) all the time and therefore don't do research and that can't be allowed. Not if you are in the superstar prestige game.

Universities will not change until some equally prestigious online university is developed that challenges their ability to attract students. As long as students show up at Yale, and there is no danger there in the foreseeable future, Yale does not have to change.

But Yale must understand what it is doing to the high school system. It has to stop telling the high schools what to teach. It has to stop talking about how high schools must prepare students for college. That should not be its job. Yale has to accept the idea that students will arrive at Yale "unprepared" for college. Making Yale's admissions process easier should not be the job of the high schools. Teaching the subjects that superstars don't want to teach should not be the job of the high schools. High schools need to focus on the concerns and issues of real students living in the real world. If Yale really believes in algebra for its students, then it can teach algebra to all entering freshmen. (Believe me, it never will.)

Until subjects cease to be the basis of the structure of universities, there will be a big problem in education across the planet because everyone everywhere assumes that university degrees are important. As long as we assume this, and as long as we accept that what is taught in high school will be determined by the universities, we are in serious trouble. High schools have become college preparation centers and thus no one learns anything but academic subjects in high school.

Cognitive processes must be the meat of high schools and should be the basis of college as well. The top-tier colleges will not change and maybe they shouldn't. They can continue to be research universities and specialize in producing the next generation of Nobel physicists or literary scholars. Great scientists are nice and I am all for producing them. But the 3,000 colleges in the United States are not all producing great physicists. Still they teach chemistry and require mathematics for no reason that anyone can remember.

If we don't start thinking seriously about how to teach thinking, as opposed to academic subjects, to the 99% of students who have no intention of becoming scholars, we will all lose.

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CHAPTER 14

What Can We Do About It?

> Simple solutions seldom are. It takes a very unusual mind to undertake analysis of the obvious.
>
> —Alfred North Whitehead

What is obvious here? Schooling is broken. It needs to be rethought. What can we build as an alternative? It is a simple question really. If we had all the resources in the world and we really wanted to educate our children, where education means teach them to think clearly, live well-thought-out lives, and be able to pursue their dreams, what would we build?

It is, of course, very difficult to think about replacing sacred institutions. The only way I know to think about it, is as a thought experiment. Just imagine that we lived in a different world, maybe a Greek colony in the 1st century, and ask yourself how we might educate our children in this environment, pretending that schools are the one thing we cannot build for some reason. As we think about this, we must not assume that what we teach in schools now needs to be taught in some other way. We simply need to ask: *What should one teach children?* while making no assumptions that what we have been teaching is necessarily relevant.

To put this another way, the right question to ask is: *What do children need to be able to do, in order to function in the world they inhabit?* The next question is, of course, How would we teach children to do those things?

Now admittedly I am prejudicing the answer here by simply leaving out the word *know*. The usual question is, What should children *know*? It is this question that leads people to make lists of things every 3rd-grader should know and allows school boards to create lists of facts students need to be tested on. So, let's leave that word out of the discussion and see where it gets us.

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A good place to start is to ask what a highly functioning adult can do and moreover has to be able to do in order to live in this world. When we ask this question, the phrase "21st-century skills" will not come up. Every time that phrase comes up, somehow the answer turns out to include algebra and calculus and science, which, the last I heard, were 19th-century skills too.

In fact, let's not talk about particular centuries at all. To see why, I want to diverge for a moment into a discussion of the maritime industry, a subject with which I have become more fascinated over the years. What did a mariner from Ancient Greece have in common with his modern counterpart in terms of abilities?

The answer is an obsession with weather, ship maintenance, leadership and organization, navigation, planning, goal prioritization, and handling of emergencies.

Effective mariners from ancient times would have in common with those of today is an understanding of how to operate their ships, the basic laws of weather, tides, navigation, and other relevant issues in the physical world, and an ability to make decisions well when circumstances are difficult. They also would have to know how to get along with fellow workers, how to manage the people who report to them, as well as basic laws of commerce and defense.

In fact, the worlds they inhabit, from an educational point of view, that is, from thinking about what to teach and how to teach it, would be nearly identical except for one thing: how to operate and maintain the equipment. Their ships were, of course, quite different.

So, let's reformulate this question that seems to haunt every modern-day pundit on education (usually politicians or newspaper people). What are 21st-century skills? Can this question be transformed (for mariners) into what does a 21st-century mariner need to be educated about that his Ancient Greek counterpart was not educated about?

The answer, it seems obvious to me, is 21st-century equipment and procedures: engines, navigation devices, particular political situations, computers, and so on. But, and this is an important "but," none of this stuff is the real issue in the education of a mariner. The real issue is decision making. What one has to make a decision about is secondary to the issue of knowing how to make a decision at all.

You can learn about a piece of equipment or a procedure by apprenticeship. Start as a helper and move on gradually to being an expert. But this is not what school emphasizes. School typically attempts to intellectualize these subjects. Experts write books about the theory

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of how something works and the next we know, schools are teaching that theory as a prelude to actually doing the work. Scholarship has been equated with education. You do not have to know calculus to repair an engine. You might want to know calculus to design an engine, but that is no excuse for forcing every engineer to learn it. Similarly, you do not have to know theoretical physics to master the seas. Mariners do know physics, of course—practical physics about load balancing, for example—but they do not have to know how to derive the equations that describe it.

What I am saying here about the shipping industry holds true for every other area of life as well. Twenty-first-century skills are no different from 1st-century skills. Interestingly, Petronius, a 1st-century Roman author, complained that Roman schools were teaching "young men to grow up to be idiots, because they neither see nor hear one single thing connected with the usual circumstances of everyday life." In other words, schools have always been about educating the elite in things that don't matter much to anyone. This is fine as long as the elite don't have to work.

But today the elite have extrapolated from what they learned at Harvard and decided that every single schoolchild needs to know the same stuff. So, they whine and complain about math scores going down without once asking why this could possible matter. Math is not a 21st-century skill any more than it was a 1st-century skill. Algebra is nice for those who need it, and useless for those who don't. Skill in mathematics is certainly not going to make any industrial nation more competitive with any other, no matter how many times our "experts" assert that it will. One wonders how politicians can even say this junk, but they all do.

Why?

My own guess is that, apart from the fact that they all took these subjects in school (and were probably bad at them—you don't become a politician or a newspaper person because you were great at calculus), there is another issue: They don't know what else to suggest.

Thinking about the 1st-century will help us figure out what the real issues are. People then and people now had to learn how to function in the world they inhabit. This means being able to communicate, get along with others, function economically and physically, and in general reason about issues that confront them. It didn't mean then, and doesn't mean now, science and mathematics, at least not for 95% of the population.

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How do we choose who studies the elite subjects? We don't.

Offer choices. Stop making lists of what one must know and start putting students into situations where they can learn from experience while attempting to accomplish goals that they set out for themselves, just as people did before there were schools. Education has always been the same: learning from experience with help from wiser mentors. School has screwed that all up and it is time to go back to basics.

So the "what" question is simple. We should teach children what adults know that enables them to function in the world they inhabit. This has much less to do with academic knowledge than it has to do with practical, and often subconscious, knowledge of how to do a variety of things in the social and physical and economic world we have created.

Now let's address the question of how to teach these things.

John Dewey noted, in 1916, that he had been talking about learning by doing for a long time, but nobody ever listened to him about it—which was exactly his point. He was frustrated about changing the system. In 1916! Imagine how he would feel today.

It is not unreasonable to ask why the system never changes, and who is making sure that it won't change. The answer is obvious. So many people have vested interests in things staying as they are that the system basically cannot change—at least not of its own free will.

The President of the United States could help make the changes needed, but he won't. Here is a piece from then-Senator Obama's education speech given during his campaign in Dayton, Ohio, in 2008:

> We will help schools integrate technology into their curriculum so we can make sure public school students are fluent in the digital language of the 21st-century economy. We'll teach our students not only math and science, but teamwork and critical thinking and communication skills, because that's how we'll make sure they're prepared for today's workplace.

Some advisor of his had read my writings and was quoting me on that one. I usually say reasoning and not critical thinking, but this is taken from my many speeches on education. And what has the President actually done? He said in that same speech:

> And don't tell us that the only way to teach a child is to spend most of the year preparing him to fill in a few bubbles on a standardized test. I don't want teachers to be teaching to the test. I don't want them uninspired and I don't want our students uninspired.

Uh huh. Did he change No Child Left Behind? No. Of course not. Testing dominates education as much as it ever did. All presidents are the same, really. They can't fight the vested interests, or won't. I will avoid figuring out why here, although, once again, John Dewey had much to say on the subject of how governments stay in power by making sure that people aren't really educated.

We can't count on politicians, but here is what we can do. We can build it and then we can work inside or outside the system in such a way that allows people to be able to come.

But how do you build a new high school system? Very simple: one curriculum at a time. The trick is making sure that you put the curricula online. We cannot change education one school at a time. Many good schools have been created over the years. Today, John Dewey's Lab School (in Chicago), which was entirely a learning-by-doing place, is now a college prep school. Having a few reasonable schools will not change the system. A curriculum offered online is available to everyone and eventually can provide an alternative to a system that offers boring and mindless education.

In addition, *online* means *choices*. Once we create dozens, maybe hundreds, of curricula from which to choose, students should be able to learn anything they want to learn without regard to whether a teacher for that curriculum or other students interested in that curriculum happen to live nearby.

So, in an ideal world, what would these curricula be about?

They can be about anything that one can learn to do in the real world (which would leave out all the traditional academic subjects). They should teach teaching cognitive processes, of course, but one should not endeavor to teach cognitive processes specifically, that is, apart from their possible use. So, it is the use of these processes in some area of real life that would be the intent of any full-year, story-centered curriculum.

These curricula and any others that we would design have the following characteristics:

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1. They must be learn-by-doing curricula consisting of series of projects inside coherent stories about life in some aspect of the real world.
2. They must be delivered on the web. Students should work on projects where the background and help are web delivered. They would submit their work to mentors and receive feedback online.
3. Mentors in the curricula would include parents, online subject matter experts worldwide, local experts, and teachers trained to be mentors. Mentoring, unlike teaching, is not about providing information that can be found easily in books but about helping students through a problem without giving them the answer. Mentors point students in the right direction and react to their work as it progresses.
4. Students should, on a regular basis (sometimes weekly, sometimes more often), submit work products related to each project for evaluation and feedback. Students would submit their work many times to achieve increasing mastery and get continuing feedback. There should be no competency tests, only the continual monitoring of performance.
5. Each curriculum should be designed by a panel of experts in a given field. The curriculum should provide a simulation of what life might be like in that field. For example, students might spend the year working legal cases, or starting a business, or designing roads and bridges.
6. Students should be encouraged to work in virtual teams, learning to deal with others to produce results.
7. Choice must be a staple of the curricula. There can be no single set of standard requirements. Instead, students should be able to select the curricula they wish to participate in. Their records would list what deliverables they have created in their chosen curricula.
8. Curricula must be designed around projects with clear, meaningful, achievable goals. They must be designed carefully so to incorporate all the key basic skills like reading, writing, reasoning, researching, calculating, computing, and so on, in a systematic and natural way.

Here are some curricula that have been proposed that would meet student's interests head on, that would be able to teach them to be good at a variety of skills (including all 12 cognitive processes), and that would make the students employable as well:

- Criminal Justice
- Sports Management
- The Music Business
- The Legal Office
- Military Readiness
- The Fashion Business
- Aerospace Engineering
- Computer Networking
- Homeland Security
- Medical Technology
- Construction
- Computer Programming
- Television Production
- Real Estate Management
- Architecture
- The Banking Industry
- Automotive Engineering
- Architecture
- Biotechnology
- Film Making
- Travel Planning
- Financial Management
- Parenting and Childcare
- Starting an Online Business
- Urban Planning
- Hotel Management
- Health Sciences
- The Food Industry
- Graphic Arts
- Communication
- Veterinary Science
- Marketing
- Telecommunications
- Scientific Reasoning

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Obviously, this list could be much longer. The intention here is to make any student excited about learning because what he or she wants to learn about is offered. The trick for the designers of the curricula is to make sure that students' interest is grabbed and maintained for a full year, while teaching them how to hone their capabilities at the 12 cognitive processes.

What are the obstacles?

What would prevent this from happening? Really there are only four issues:

Finding people who know how to build the curricula
Paying the people who will build the curricula
Convincing schools or other entities to offer the curricula
Training teachers to be mentors in these curricula

Smart, articulate, people who are well organized and can write well can easily learn to do the bulk of the work involved in building a course as long as they have access to experts and are guided by experienced designers, and the project is run by someone how knows how to run projects. Finding people who can do this work is not a problem. Being able to pay them for the year or so that it takes to do the work is the real issue.

This leads us to discuss who would pay for this. The answer should be the federal government, but it is clear that that will never happen. The federal government, as any interested citizen knows, is influenced mightily by big business, especially when big business has profits to protect.

Companies that produce textbooks and companies that produce and grade exams will not stand by and see their revenues drop. Any alternative curriculum that did not use textbooks and did not use standardized tests would be anathema to them. Companies that have billions of dollars in revenues from textbooks know how to encourage politicians to protect their interests.

What about the testing industry? A recent report says that "the testing industry is somewhat secretive." I wonder why. But sometimes they do report revenue. To give an example, the revenue of Kaplan Inc., which is just one of many test preparation companies, was over $1 billion in 2008. Who owns Kaplan? *The Washington Post.* So while the testing companies make great profits, the nation's newspapers, having a vested interest in those profits, tout testing as the country's

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salvation. The most visible touter is the Secretary of Education, who gives eloquent speeches about more rigorous testing that are, of course, printed in *The Washington Post.*

Why would President Obama want to do the same thing as President Bush did, especially when he campaigned against No Child Left Behind, as I pointed out earlier? The answer is simple. There is lots of money invested in testing by powerful players. Kids are no one's main concern.

So the money for the new plan will not be coming from the government.

What about from business? Venture capital, for example?

Is a new kind of high school offered online likely to be a successful business venture? One mentor in the story-centered curriculum can handle between 20 and 50 students, depending on the mentor's experience. Assuming that the students pay tuition that covers the mentor's salary, which means they need to pay at least $3,000 a year, more or less, in tuition, it shouldn't cost anything to run. Charge larger tuitions and there will be profits. Initial investment is about $2 million to build a curriculum, but enough students paying reasonable tuitions will pay that investment back quickly enough. So, is this a big business opportunity?

Actually I doubt it. I think that it is a big opportunity for universities that traditionally charge large tuitions. We have had a great deal of success with master's degrees, for example. But universities typically don't invest $2 million in anything, even if it does have great upside potential. When Carnegie Mellon University made that investment in its West Coast campus (where I was designing the curriculum), it did so without quite knowing it was doing so because the person in charge didn't tell the University officials what he was up to. Universities typically don't think about investing money in order to make money in the daily enterprise. Businesses do think that way, of course, but businesses have trouble starting universities that are accredited. I worked for Trump University, which supposedly was going to do exactly that, but they never could raise enough money or figure out how to be accredited. So there is a potentially very big business in master's degrees, but it needs some well-financed and prescient people to make it happen.

High schools are another story. I actually do not believe that business will invest in online high schools whose mission is to overthrow the existing system. Venture capitalists are not revolutionaries. They tend to follow the herd in whatever they do and there is no herd in

education except the one promoting more testing. They certainly do invest in that.

So we are left with appealing to people who actually care about kids and their education. Money isn't and shouldn't be the allure here. This means that the saviors of education will have to be wealthy individuals or foundations started by wealthy individuals.

The health sciences curriculum that we built was funded by the Ewing Kauffman Foundation. We built it using our not-for-profit company, Engines for Education. I really believe that no alternative to the nonprofit model funded by wealthy people exists. We just have to find people who care about education. They are in short supply, and they typically aren't the wealthy people who make pronouncements about education, but I am hopeful that they are out there.

I wouldn't mind being wrong about anything I have said here. The federal government could get taken over by people who actually care about kids and not votes.

How do we convince schools to offer these curricula once they have been developed? It won't be easy. There aren't that many schools run by people who realize that the system is broken. But they do exist, however. The real problem is not so much convincing the head of a private school or the superintendent of a school district. It is more about convincing parents who fundamentally do not understand education, or teachers who have taught what they have always taught and really don't want to learn new skills.

And, in addition, there are all those state standards. The first thing that any school that wants to use our curriculum has to do is to see how they can map what we will teach into their state's standards. If the state standards specify 2 years of algebra, we are out of luck. If they have vague science standards, we are in better shape. Either way, the state standards, passed by all those brilliant state legislatures that know all there is to know about what should be taught in high school, inhibit real change in the system.

So we need motivated heads of schools or school systems, in states that have flexible standards, where parents who hold views about why school was better in their day do not have to be listened to. Do these exist?

Sure.

The last issue is training teachers to mentor. We do this by having teachers be students in a curriculum mentored by others who have experience in that curriculum. Mentoring does not come naturally to

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people who have been teaching in the usual way. But they pick it up and often find that they like it better.

Here is Lynn Carter, one of the first mentors we trained to teach in this new way at CMU's West Coast campus. He is a professor of software engineering at Carnegie Mellon University.

> It has taken me a while to figure out how to undo about 25 years of teaching experience that was standing in front of a room and talking, but I really like it. I enjoy interacting with students. As much as I enjoy standing in front of students and talking, it is much more satisfying to be dealing with smaller groups, more of a one-on-one interaction.
>
> Professors often complain that no students come to see them during their office hours. That isn't a problem with us here.

How did we teach Professor Carter to mentor Socratically? It wasn't trivial to do, but it didn't take that long either. Once a teacher gets the idea that his job is not telling but helping, he gets into the swing of it fairly easily. Training teachers to teach in the kinds of SCCs we propose for high school is more an issue of familiarizing them with the content, which will differ considerably from what they have been teaching. Handholding comes naturally to most people because they have been doing that kind of teaching all their lives with siblings and children. Lecturing is not a natural human activity and teachers are easily dissuaded from doing it as long as they are not being presented with a classroom of listeners.

In the end, the real question is this: Why do we still have schools?

This is a little like asking why we still have religious institutions. In fact, it is a lot like asking that question because you will get the same reactions. People get used to the institutions that have always been a part of their lives. The fact is that these institutions were created in a different time when knowledge was harder to come by and the economy was quite different.

Religion is not my issue. Should we still have schools?

Instead of answering this question by listing all the good things that schools provide—no one would argue that a literate population is a bad thing, for example—I will turn the question around: What is bad about having schools?

Here is a list of what is bad. Following the list, I will explain what is bad about these things (assuming it isn't obvious).

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Schools emphasize competition.
Schools make kids stressed.
Schools know the right answers.
Schools enable bullying and peer pressure.
Schools stifle curiosity.
Schools choose the subjects for students.
Schools have classrooms.
Schools give grades.
Schools provide certification.
Schools confine children.
Schools claim that academics are the winners.
Schools do not value practical skills.
Schools cause students to want to please teachers.
Schools cause students to question their self-worth.
Schools are run by politicians.
Governments use education for repression.
Discovery is not valued in school.
Boredom is seen as a bad thing in school.

Competition: Why should school be a competitive event? Why do we ask how a kid is doing in school? Learning in life outside of school is not a competitive event. We learn what we choose to know in real life.

Stress: When 6-year-olds are stressed about going to school, you know that something is wrong. Is learning in real life stressful? Stress can't be helping kids learn. What kid wouldn't happily skip school on any given day? What does this tell us about the experience?

Right answers: School teaches that there are right answers. The teacher knows them. The test makers know them. Now you have to know them. But in real life, there are very few right answers. Life isn't mathematics. Thinking about how to behave in a situation, planning your day or your life, plotting a strategy for your company or your country—no right answers.

Bullying and peer pressure: You wouldn't have to have *say no to drugs or cigarettes* campaigns if kids didn't go to school. In school there are always other kids telling you how to dress, how to act, how to be cool. Why do we want kids' peer groups to be the true teachers of

children? Being left out terrorizes children. Why do we allow this to happen by creating places that foster this behavior?

Stifling of curiosity: Isn't it obvious that learning is really about curiosity? Adults learn about things they want to learn about. Before the age of 6, prior to school, one kid becomes a dinosaur specialist, while another knows all about dog breeds. Outside of school, people drive their own learning. Schools eliminate this natural behavior.

Subjects chosen for you: Why algebra, physics, economics, and U.S. history? Because those subjects were pretty exciting to the president of Harvard in 1892. And, if you are interested in something else—psychology, business, medicine, computers, design? Too bad. Those subjects weren't taught at Harvard in 1892. Is that nuts or what?

Classrooms: If you wanted to learn something and had the money, wouldn't you hire someone to be your mentor, and have them be there for you while you tried out learning the new thing? Isn't that what small children have, a parent ready to teach as needed. Classrooms make no sense as a venue for learning unless, of course, you want to save money and have 30 (or, worse, hundreds of) students handled by one teacher. Once you have ratios like that, you have to teach by talking and then hoping someone was listening, so then you have to have tests. Schools cannot work as places of learning if they employ classrooms. And, of course, they pretty much all do.

Grades: Any professor can tell you that students are pretty much concerned with whether what you are telling them will be on the test and what they might do for extra credit. In other words, they want a good grade. If you tell them that 2 + 2 = 5 and it will be on the test, they will tell you that 2 + 2 = 5 if it means getting a good grade. Parents do not give grades to children and employers do not give grades to employees. They judge their work and progress for sure, but not by assigning numbers to a report card.

Certification: We all know why people attend college. They do so primarily to say they are college graduates so they can get a job or go on to a professional school. Most don't care all that much about what

hoops they have to go through. They do what they are told. Similarly, students try to get through high school so they can go on to college. As long as students are not in school to get an education, you can be pretty sure they won't get one. Most of our graduates have learned to jump through hoops, nothing more.

Confined children: Children like to run around. Is this news to anyone? They have a difficult time sitting still and they learn by trying things out and asking questions. Of course, in school sitting still is the norm. So we have come up with this wonderful idea of ADHD, that is, drug those who won't sit still into submission. Is the system sick or what?

Academics viewed as winners: Who are the smartest kids in school? The ones who are good at math and science, of course. Why do we think that? Who knows? We just do. Those who are good at these subjects go on to be professors. So those are certainly the smartest people we have in our society. Perhaps they are. But I can tell you from personal experience that our society doesn't respect professors all that much, so something is wrong here.

Practical skills not valued: When I was young, there were academic high schools and trade high schools. Trade high schools were for dumb kids. Academic high schools were for smart kids. We all thought this made sense. Except that are a lot of unemployed English majors and a lot of employed airplane mechanics. Where did we get the idea that education was about scholarship? This is not what Ben Franklin thought when our system was being designed, but he was outvoted.

The need to please teachers: People who succeed at school are invariably people who are good at figuring out what the teacher wants and giving it to her. In real life there is no teacher to please and these "grade grubbers" often find themselves lost. When I did graduate admissions, if a student presented an undergraduate record with all A's, I immediately rejected him. There was no way he was equally good at or equally interested in everything (except pleasing the teacher). As a professor, I had no patience for students who

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thought that telling me what I just told them was the essence of academic achievement.

Self-worth questioned: School is full of winners and losers. I graduated number 322 in my high school class (out of 678). Notice that I remember this. Do you think this was good for my self-esteem? Even the guy who graduated number 2 felt like a loser. In school, most everyone sees themselves as a loser. Why do we allow this to happen?

Politicians in charge: Politicians demand reform but they wouldn't know reform if it hit them over the head. What they mean is that school should be like they remember rather than how it is now, and they will work hard to get you to vote for them to give them money to restore the system to the awful state it always was in. Politicians, no matter what party, actually have no interest in education at all. An educated electorate makes campaigning much harder.

Government use of education for repression: As long as there have been governments, there have been governments that wanted people to think that the government (and the country) is very good. We all recognize this tendency in dictatorships that promote the marvels of the dictator and rewrite history whenever it is convenient. When you point out that our government does the same thing, you are roundly booed. We all know that the Indians were savages that Abraham Lincoln was a great president and that we are the freest country on earth. School is about teaching "truth."

Discovery not valued: The most important things we learn we teach ourselves. This is why kids have trouble learning from their parents' experience. They need their own experiences to ponder and to learn from. We need to try things out and see how they go. This kind of learning is not valued in school because it might lead to, heaven forbid, failure, and failure is a really bad word in school. Except failure is how we learn, which is pretty much why school doesn't work.

Boredom ignored: Boredom is a bad thing. We drug bored kids with Ritalin so they will stop being bored. All of my best work has come when I was most bored and let my mind wander. It is odd that

we keep trying to prevent this from happening with kids. Lots of TV, that's the ticket.

Major learning by-doing mechanism ignored: And last but not least, scholars from Plato to Dewey have pointed that people learn by doing. That is how we learn. Doing. Got it? Apparently not. Very little doing in schools. Unless you count filling in circles with number 2 pencils as doing.

Online education can change all this. Build it right once and children the world over will have the opportunity to learn how to think and to learn how to work. Such a system would be capable of changing fast. Any new industry or market or technology could produce a course in what is needed to work in that field and instantly get the people it needed.

Schools are an ancient artifact that can't last much longer.

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Notes

Chapter 1

1. In the United States it all stems from a meeting of the Committee of Ten chaired by the president of Harvard in 1892.

2. John Adams, the second president of the United States, said that school should teach us how to live and teach us how to make a living. No subsequent U.S. president has ever understood this point, however.

Chapter 2

1. Paul Ramsden. *Learning to Teach in Higher Education*. New York: Routledge, 1992..

2. Arthur W. Chickering and Zelda F. Gamson. "Seven Principles for Good Practice in Undergraduate Education." *The American Association for Higher Education Bulletin,* March 1987.

3. John V. Adams, Student Evaluations: The Ratings Game. *Inquiry, 1*(2), Fall 1997, 10–16.

Chapter 3

1. From a column by Robert Jamieson, Jr., Seattle PI.com, February 27, 2008.

2. I didn't start writing about education until 1978. Before that it was always artificial intelligence that concerned me.

3. I have done this in gory detail in *Dynamic Memory* and in *Dynamic Memory Revisited* as well as in *Explanation Patterns*.

4. *Tell Me a Story*.

Chapter 5

1. For more on the origins of the school system, see *The Origins of the American High School* as well as *Making Minds Less Well Educated Than Our Own*.

2. Socratic Arts, a company that builds learning-by-doing software for schools, businesses, and government.

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Chapter 7

1. Report Urges Changes in Teaching Math , *New York Times,* March 14, 2008.

2. Daniel Willingham, *Why Don't Students Like School: A Cognitive Scientist Answers Questions About How the Mind Works and What It Means for the Classroom.* San Francisco: Jossey Bass, 2010

Chapter 8

1. *Scripts, Plans, Goals and Understanding* (1977) and *Dynamic Memory* (1981).

Chapter 9

1. I wrote about this in some detail in *The Future of Decision Making* and have been building this kind of thing for big corporations.

2. There are many experiences one could build. I talked about some that we have built for high school and graduate school in Chapter 8. At the end of this chapter, I talk about one for little kids.

3. *Scripts, Plans, Goals, and Understanding.*

4. For example, *Dynamic Memory* and *Inside CBR.*

5. Richard Neustadt and Ernest May, *Thinking in Time: The Uses of History For Decision Makers,* Washington, D.C.: Free Press, 1988

6. Taken from *Smart Parenting,* Brad Smart and Kate Smart .Mursau: CDK Press, 2007.

7. Roger Fisher, author of *Getting to Yes.*

8. Blaise Pascal usually gets the credit.

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About the Author

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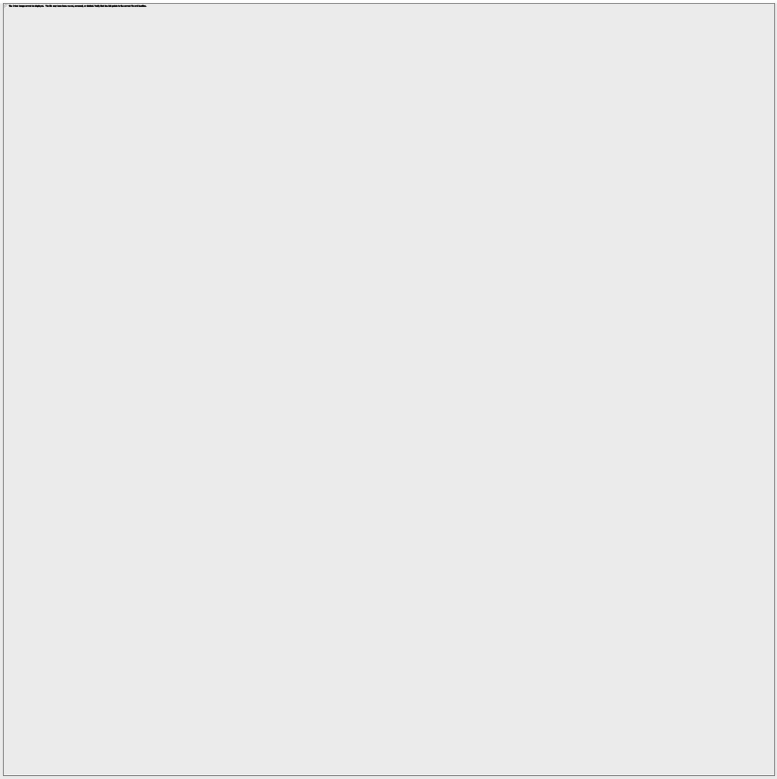
From: ASMALLWORLD [ASMALLWORLD@travel.asmallworld.net]
Sent: 7/27/2011 2:09:40 PM
To: jeeproject@yahoo.com
Subject: ASW Travel Deals: London, NYC, Miami, Maui, Racing in Baja, Hiking Moab and More

If you are unable to see this message, click here to view. To ensure delivery to your inbox, add **ASMALLWORLD@travel.asmallworld.net** to your address book.

Active Escapes, Quiet Getaways and More

Wednesday, July 27, 2011



Some people do yoga on vacation; others go for the occasional run. This week we're thinking a little more... adventurously, from active escapes at Travaasa Hana in Maui to racecar driving in Baja and hiking Moab with the experts at Austin-Lehman Adventures. And after all that action, chill out with stays at the new Dream South Beach, the gorgeous Pavilions Phuket and other luxe resorts worldwide. (Image: The Pavilions Phuket - on sale Fri, July 31.)

Sales this week

Starting Tuesday at Noon BST
Dream South Beach
Travaasa Hana - Hawaii
Esencia Estate - Riviera Maya

Starting Tuesday at 8pm BST
AVIA Hotel - Long Beach, CA
Hotel Las Palmas - Mexico

Starting Wednesday at Noon BST
Last-Minute London and NYC

Starting Wednesday at 8pm BST

Starting Thursday at Noon BST

Starting Thursday at 8pm BST

Fairmont Turnberry Isle Resort

Sofitel - Philadelphia

Hotel Derek - Houston
Arches to Moab
Spirit Ridge, British Columbia

Starting Friday at Noon BST
Hotel Allegro - Chicago

Starting Friday at 8pm BST
Vidago Palace - Portugal
The Manor On Golden Pond - NH
Candia Maris Resort - Crete

Starting Saturday at Noon BST
Round Hill - Jamaica
Fairmont Royal Pavilion
Experience Baja, Two Ways
Maca Bana - Grenada

Starting Sunday at Noon BST
Alila Sothea - Cambodia

Starting Sunday at 8pm BST
The Pavilions - Phuket
Siam Kempinski Hotel Bangkok
Anantara Bophut - Koh Samui

Starting Monday at 8pm BST
The Madison - D.C.
Grand Hyatt Atlanta
Hotel Bellevue - Washington
The Adolphus - Dallas

Art Deco Meets Modern at South Beach Newcomer

Dream South Beach

This South Beach newcomer lives up to the hype. Set in two landmark Art Deco buildings on Collins Avenue, right behind the former Versace Mansion, the boutique hotel has 108 sleek guestrooms washed in blue and white, and access to soft, sandy beaches, a restaurant helmed by chef Geoffrey Zakarian and a hip rooftop pool scene.

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Maui's Memorable Journey

Travaasa Hana - Hawaii

Reinvented from the former Hotel Hana Maui, the brand new Travaasa Hana combines - in concept and name - travel and pravaasa ("memorable journey" in Sanskrit). The mix of adventure, relaxation and truly experiencing a destination are hallmarks of Travaasa. With the beauty of Hana, Hawaii, all around, it's hard to imagine a better marriage of purpose and place.

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The Royal Ferrari Hideaway

Esencia Estate - Riviera Maya

It's rare to find a luxury resort as down to earth as this *Condé Nast Traveler* Hot List alum. Sitting on 50 wild acres of jungle by the beach, this striking Italian-style villa has white sand-colored interiors that match the serene beach outside. The Duchess of Ferrari originally built this tropical hideaway on Mexico's fabled Yucatan Peninsula in the early 1990s to entertain her globetrotting friends. It has since been remade as a 29-room boutique wonder, where that local culture is so intrinsic to the design that it can be found in the minutest details.

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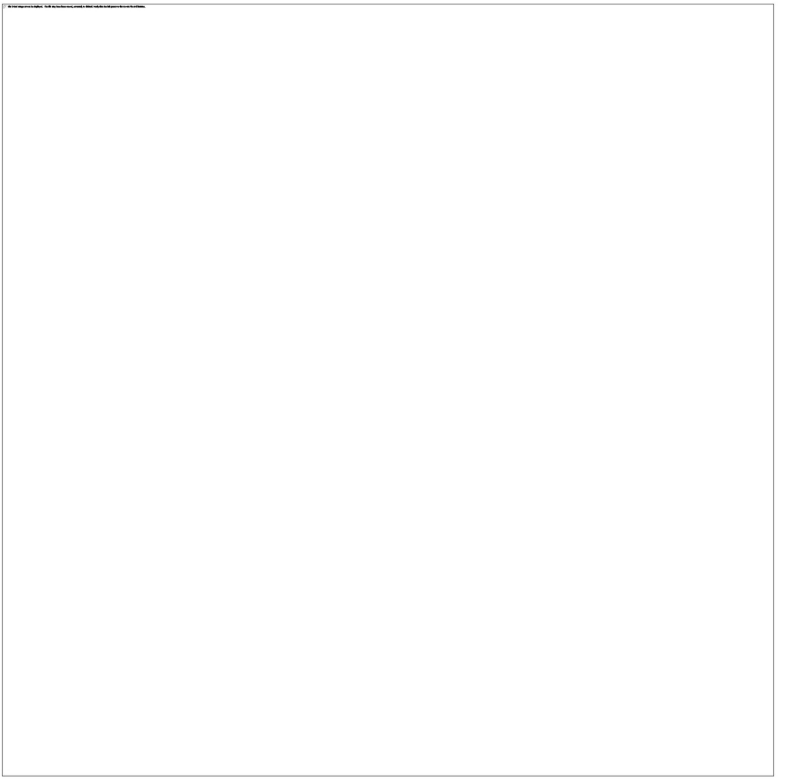
A Barefoot Hideaway in Zihuatanejo

Hotel Las Palmas - Mexico



On a nine-mile stretch of Playa Blanca, just 20 minutes from downtown Zihuatanejo, Hotel Las Palmas is unique escape between lush rain forest and the open Pacific Ocean. All 10 suites were individually designed by Enrique Zozaya in a sleek, modern-tropical style and capture the unspoiled views on private terraces and balconies. With the soaring Sierra Madre del Sur mountains in the distance and sleepy fishing village of Barra de Potosi close by, the Hotel Las Palmas is a true barefoot hideaway in a quintessentially Mexican setting.

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Minimalism to the Max in Long Beach

AVIA Hotel - Long Beach, CA

There's a lot to love in Long Beach. It's the sixth largest city in California (with nearly half a million people), one half of the western hemisphere's largest port, and it's finally coming into its own as a magnet for travelers. The modern, 138-room AVIA Hotel sits at the epicenter of all the action. And the cheery Long Beach lovers staffing the property are happy to highlight the best of the city.

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Last-Minute London and New York City

It's hard to imagine, but true: Summer will slip away before you know it. Which means it's time for a mini-getaway to one of your favorite cities. And this is the time to go - the streets are quieter, the parks are in bloom and concerts, movies and performances are staged nearly every day. We've got last-minute availability at the Landmark London and three Manhattan standouts: the elegant Hôtel Plaza Athénée, the family-friendly Roger Williams and the über-sleek Thompson LES. Choosing can be tough when the options are so good.

Hôtel Plaza Athénée
Starting Wednesday 27/7 at 5pm BST

The Landmark London
Starting Wednesday 27/7 at 5pm BST

Thompson LES
Starting Wednesday 27/7 at 5pm BST

Hotel Roger Williams
Starting Wednesday 27/7 at 5pm BST

Mediterranean Style in South Florida

Fairmont Turnberry Isle Resort

Located 20 minutes north of Miami Beach in the heart of Aventura, Fairmont Turnberry Isle Resort & Club mixes country club charm with the sleek styling of a boutique hotel. The 392-room property is home to two Raymond Floyd-designed golf courses and the Laguna Pool, which features a water slide, a lazy river and cabanas outfitted with TVs and refrigerators (this is Miami, after all). With its family-friendly vibe, Turnberry Isle falls somewhere between Grossinger's in the Catskills (at its legendary height) and a posh island resort.

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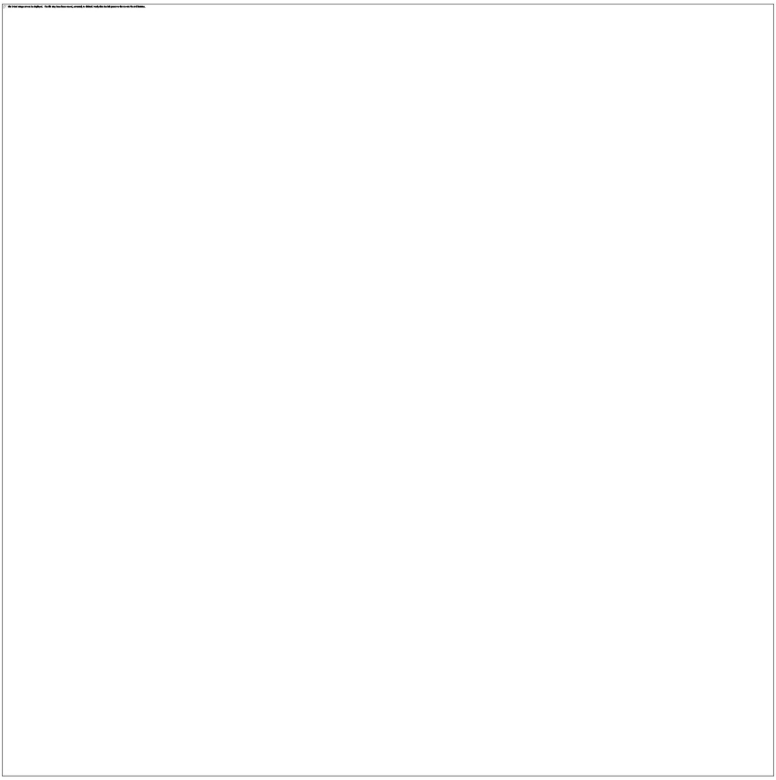
Starting Wednesday 27/7 at 8pm BST

French Service Meets American History

Sofitel - Philadelphia



In the city's former stock exchange building, the 306-room Sofitel is retrofitted with streamlined rooms and an intimate brasserie. This Philadelphia gem is where French and American style come together - think Shaker quilts next to spacious marble bathrooms - in the French Quarter of an All-American destination.

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Starting Thursday 28/7 at Noon BST

Adventures in Utah with Austin-Lehman

Arches to Moab

Epic renderings of sandstone and the frothy beauty of the Colorado River form the backdrop for Austin-Lehman's six-day exploration of the Utah desert in and around its fabled adventure capital, Moab. Guests hop on bicycles, bound down the river in rafts, clamber into 4x4s, and, of course, hike into some of the most jaw-dropping geology on the planet. Evenings are as relaxing as the days are active, with a fixed homebase - a lodge set against red-rock cliffs that happens to have its own winery.

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Starting Thursday 28/7 at 8pm BST

Wine and Golf in the Napa of the North

Spirit Ridge, British Columbia

Known as Napa of the North, Canada's Okanagan region is a year-round retreat east of Vancouver. The area is home to award-winning wineries, Canada's warmest lake and a stunning desert landscape fit for golfing virtually every day of the year. With exceptional service and Pueblo-style architecture, Spirit Ridge Vineyard Resort & Spa is just as much a hotel for oenophiles looking to unwind as it is for golf fanatics and families looking to take advantage of mild weather and myriad activities.

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Starting Thursday 28/7 at 8pm BST

Houston's Worldly Side

Hotel Derek - Houston

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Near swank shops and Houston's art-gallery scene, the Hotel Derek is designed to feel like a superhip home, with 60s-style settees, English wingback chairs and cowhide rugs. The hotel works on the assumption that its guests have the same qualities as the fictional host, Derek: worldliness, a sense of humor and an eye for beauty.

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Starting Thursday 28/7 at 8pm BST

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Chicago Shows its Quirky Side

Hotel Allegro - Chicago

It starts with a grand entrance: You'll walk in on a three-story staircase as wide as an IMAX screen. A double-sided fireplace and baby grand piano jazz up the lobby while Technicolor furnishings like cherry-red sofas and silver wallpaper add to the whimsical vibe. The Allegro, a Kimpton hotel, is a vibrant example of boutique-style hospitality in Chicago that playfully tips its hat to old-world glamour without ever taking itself too seriously.

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Starting Friday 29/7 at Noon BST

Sleep in a Palace in Portugal

Vidago Palace - Portugal

In the mountainous north of the country, just over an hour from Porto, the recently opened Vidago Palace has, in one fell swoop, raised the bar for luxury getaways in Portugal. As far removed from the sun and sand of the touristy Algarve as you can get, this is a destination for the discerning traveler and the lover of fine things, whether they be cigars, hand-painted silk wallpaper, the country's best spa or a championship golf course.

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Starting Friday 29/7 at 8pm BST

Beach, Spa, Repeat in Crete

Candia Maris Resort - Crete

With 285 rooms, Crete's Candia Maris beachfront resort is large by Greek hotel standards. It shares the space between the large and airy guestrooms, a choice of restaurants and a host of activities, whatever your interest. Waterbabies will love the seven pools and sybarites can camp out in the resort's Thalassotherapy spa. Overlooking Amoudara beach just outside Heraklion, the resort underwent a top-to-bottom renovation five years ago, adding modern style and amenities to this uber-resort.

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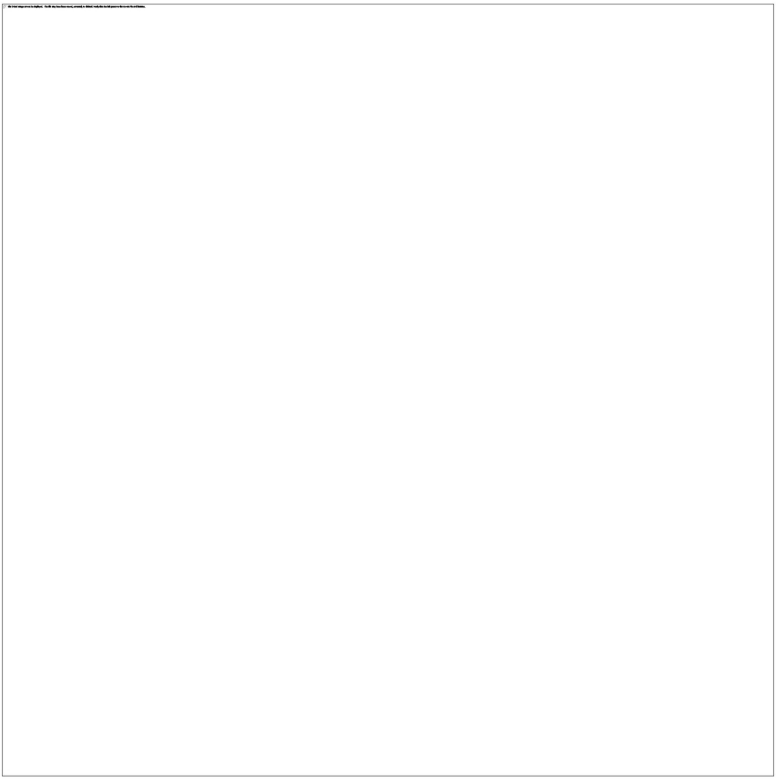
Starting Friday 29/7 at 8pm BST

The Real "On Golden Pond"

The Manor On Golden Pond - NH



Katharine Hepburn and Henry Fonda made this elegant B&B famous in the 1981 film *On Golden Pond*, but three decades later the 13-acre estate on Squam Lake remains a revered and romantic New Hampshire countryside escape. With unbeatable views of the White Mountains, Manor on Golden Pond has distinctive guestrooms - from the Cotswold Cottage to the Canterbury Manor - plus all the trappings of a sophisticated inn, with the English heritage to back it up.

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Starting Friday 29/7 at 8pm BST

An Eco Retreat on the Spice Isle

Maca Bana - Grenada

Grenada is known as the most gregarious of the Caribbean islands, and Maca Bana, on a secluded cove on the Point Salines peninsula, represents a microcosm of that, from the general manager to the gardener. The boutique villa hotel (appropriately named after a tree in the indigenous Arawak language) has an infinity pool and beachside restaurant to entertain, plus each villa has a deck with a private hot tub. And even though the resort is just five minutes from the airport, it feels worlds away.

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Starting Saturday 30/7 at Noon BST

High Style in Montego Bay

Round Hill - Jamaica

With room decor by Ralph Lauren, Round Hill is a true standout among the properties along the northwest coast of Jamaica. High-end yet relaxed, it has sprawling grounds and a full-service attitude that invites total indulgence for guests. It's also got awe-inspiring views of the Caribbean from the rooms, restaurants and infinity pool, where visitors feel as if they're literally floating in the sea.

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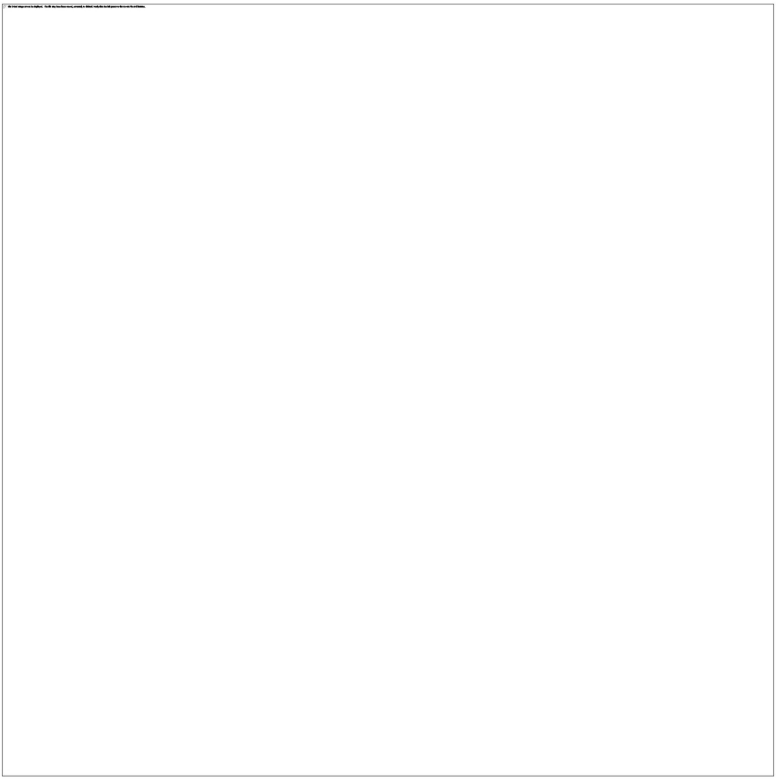
Starting Saturday 30/7 at Noon BST

A Barbados Stay Fit for Royals

Fairmont Royal Pavilion



Skilled in the art of seduction, the Fairmont Royal Pavilion was one of the first great beach hotels to open on Barbados. Refreshed by a major 2010 renovation, this graceful Colonial-style estate makes the most of its location - by day guests swim, sail and cavort along the powdery beach or simply enjoy the views from a private terrace overlooking the water. And by night, one of the island's most elegant tables will be available, where dinner is served with the serenading sounds of the surf.

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Starting Saturday 30/7 at Noon BST

Racecars & Relaxation with Momentum Adventure

Experience Baja, Two Ways

This six-day journey with Momentum Adventure explores the wild, stark landscape of the Baja Peninsula, and balances adrenaline-infused outings with relaxation at the iconic One&Only Palmilla. Navigate a Baja Challenger racecar through sand washes, cactus forests and lone beaches; score a hole-in-one at a Jack Nicklaus-designed golf course; and fish for blue marlins in a yacht off the shore. Come evening, sip tequila in a breezy villa that overlooks the Sea of Cortez.

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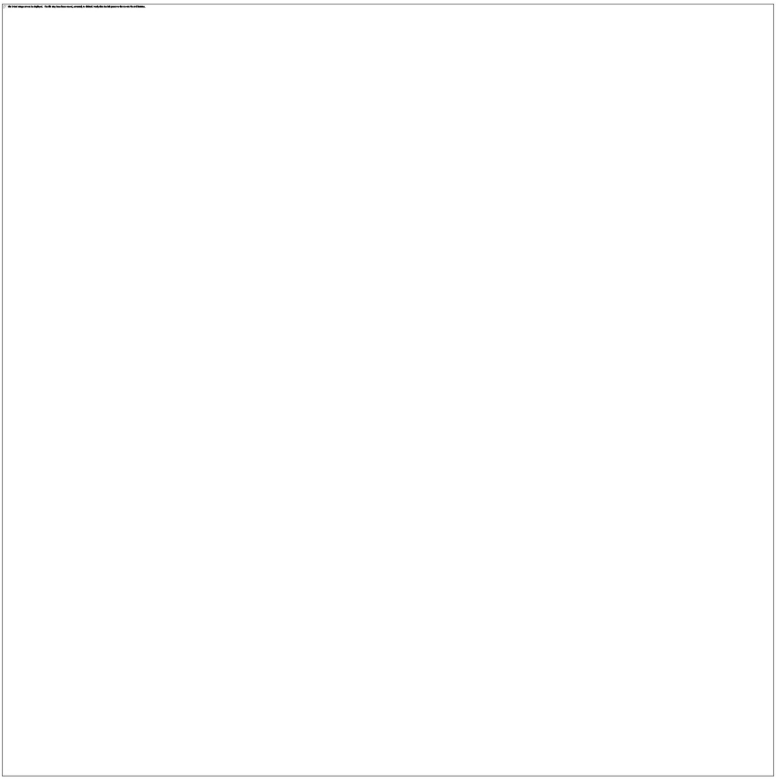
Starting Saturday 30/7 at Noon BST

Romance Near the Temples of Angkor Wat

Alila Sothea - Cambodia



Over the last decade, Siem Reap, the gateway to Cambodia's magnificent temples of Angkor Wat, has morphed from a dusty backpacker hangout to a picturesque town filled with an array of five-star hotels, artsy boutiques and restaurants oozing with ambience. Service here is some of the finest and friendliest in the region, a trait nowhere more evident than at the all-suite Alila Sothea. The hotel's regal 39 rooms, which surround a glittering slate-and-gold-leaf-tiled pool, offer a tranquil, resort-like atmosphere that's rich with local culture and just 20 minutes by car from Angkor.

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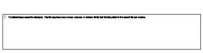
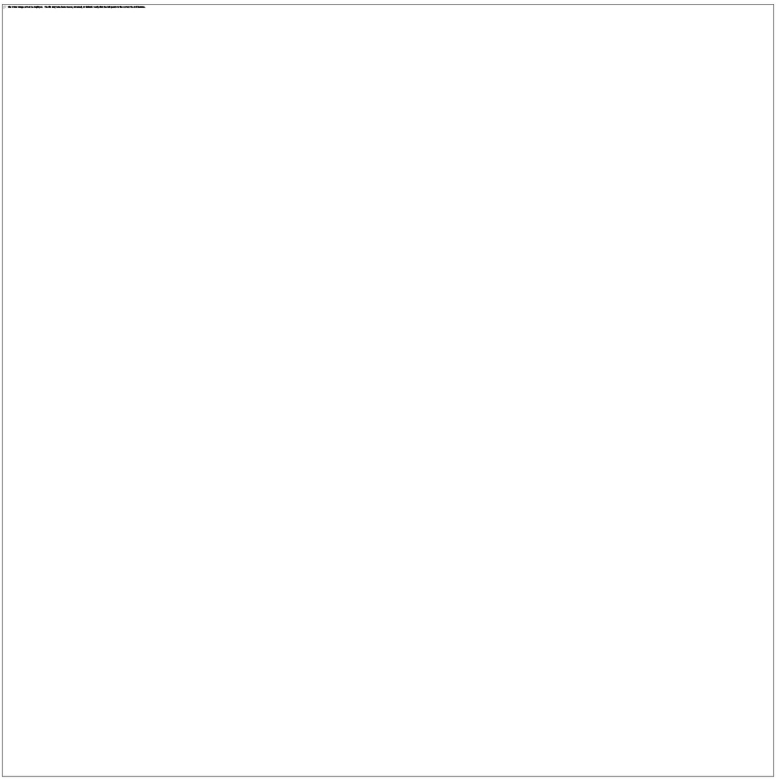
Starting Sunday 31/7 at Noon BST



Hilltop Romance on Phuket

The Pavilions - Phuket



These hilltop retreats are some of Phuket's most romantic crash pads thanks to sublime panoramic Andaman Sea views and the island's most discreet staff. All villas include swimmable pools and roomy decks for sun and shade. The 360 bar attracts the island's best dressed inhabitants who flock here at sundown for the calm view then stay sipping colorful cocktails late into the warm night.

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Starting Sunday 31/7 at 8pm BST

From Cooking to Kickboxing on Koh Samui

Anantara Bophut - Koh Samui

The best part of staying at the Anantara Bophut - besides the fact that it's on a beautiful Koh Samui beach - is the activities menu, which keeps every type of traveler entertained. Spend mornings windsurfing or learning Thai kickboxing, and afternoons cooking authentic regional dishes or snorkeling in the Gulf of Thailand. If you're craving some slothful downtime, relax next to the giant lagoon-style infinity pool or in the blissful spa.

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Starting Sunday 31/7 at 8pm BST

Art Deco Meets Thai Flair in Sizzling Bangkok

Siam Kempinski Hotel Bangkok

Though it's just steps from Bangkok's best shopping malls (and the city's notorious traffic-thronged streets), the Siam Kempinski Hotel Bangkok manages to provide a tranquil getaway that feels miles from the city's chaos. Capitalizing on the hotel brand's European roots, the design is an artful blend of Art Deco accents and Thai flourishes. In 303 rooms, huge beds, baths and work/lounge areas provide ample space to recharge, while the amenities - a pool area, a spa and one of the city's best restaurants - offer plenty of excuses to stay close to home.

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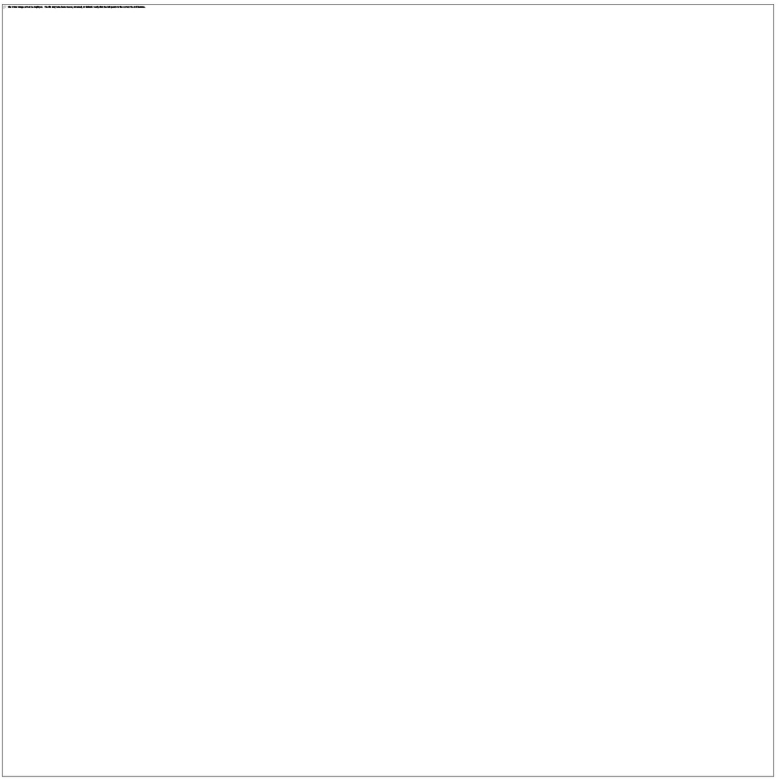
Starting Sunday 31/7 at 8pm BST

Stately Style in the Heart of Washington D.C.

The Madison - D.C.



Named for James Madison, the fourth president and "father of the Constitution," this stately hotel has traditional style and refined service to match - plus, a location that puts many of Washington's must-see museums and monuments along the National Mall within walking distance. Opened in 1963, the 353-room hotel has hosted the Dalai Lama, the occasional celebrity and every U.S. president since John F. Kennedy except Barack Obama. Not to worry - you can stop by the White House, just five blocks away.

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Starting Monday 1/8 at 8pm BST

Atlanta's Tranquil Retreat, Newly Updated

Grand Hyatt Atlanta

With 438 newly renovated cream-and-beige rooms (thoughtful details include iPod docks and air purifiers), a quiet and plush restaurant that serves locally-inspired Southern dishes and a beautifully manicured 9,000-square-foot Japanese garden, the Grand Hyatt Atlanta makes a tranquil retreat in the heart of the city's Buckhead District. This is the shopping mecca of the South, so boutiques, plus lots of award-winning restaurants, are all just steps away.

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Starting Monday 1/8 at 8pm BST

The Beer Baron's Classic Dallas

The Adolphus - Dallas

Built by beer baron Adolphus Busch in 1912 two blocks from Neiman Marcus's flagship store, Dallas's Adolphus Hotel has kept its place as a favorite among distinguished visitors for years. The draw? An Old World aesthetic with traditional furniture and paintings, a hyperattentive staff and an outstanding French restaurant - right in the middle of downtown.

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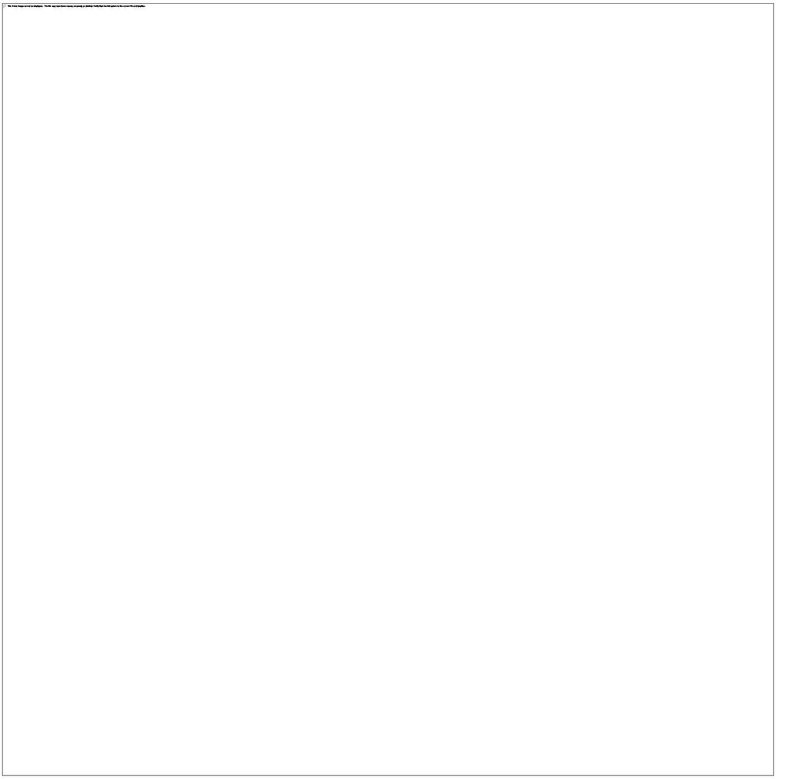
Starting Monday 1/8 at 8pm BST

Beautiful Views in Washington State

Hotel Bellevue - Washington



While Seattle may be one of the smartest cities in the country, its next door neighbor Bellevue is one of the most glamorous. Appealing to both savvy business travelers and couples seeking a romantic respite, Hotel Bellevue is an unassuming retreat in an environment where wealthy residents reign supreme. The property is intimate in size (just 67 rooms), but features luxury amenities in a serene garden setting, just a few blocks from the hustle and bustle of downtown Bellevue.

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Starting Monday 1/8 at 8pm BST

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NEW LEAF VENTURES III, L.P.

– $375 MILLION LIMITED PARTNER INTERESTS –

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

APRIL, 2014

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THIS MEMORANDUM IS FOR THE CONFIDENTIAL USE OF ONLY THOSE PERSONS TO WHOM IT IS TRANSMITTED IN CONNECTION WITH THIS OFFERING. EACH RECIPIENT ACKNOWLEDGES AND AGREES THAT THE CONTENTS OF THIS MEMORANDUM AND RELATED DOCUMENTATION CONSTITUTE PROPRIETARY AND CONFIDENTIAL INFORMATION, THAT NEW LEAF VENTURE PARTNERS, L.L.C. ("***NEW LEAF***" OR THE "***MANAGEMENT COMPANY***") AND THE FUND DERIVE INDEPENDENT ECONOMIC VALUE FROM THEIR CONTENTS NOT BEING GENERALLY KNOWN, AND THAT THE MANAGEMENT COMPANY TAKES REASONABLE EFFORTS TO MAINTAIN THEIR SECRECY. IN ADDITION, EACH PERSON WHO RECEIVES THIS MEMORANDUM AGREES THAT ITS CONTENTS ARE A TRADE SECRET, THE DISCLOSURE OF WHICH IS LIKELY TO CAUSE SUBSTANTIAL AND IRREPARABLE COMPETITIVE HARM TO THE MANAGEMENT COMPANY AND THE FUND. BY ACCEPTANCE HEREOF, EACH RECIPIENT AGREES NOT TO TRANSMIT, REPRODUCE OR MAKE AVAILABLE TO ANYONE, IN WHOLE OR IN PART, THIS MEMORANDUM, ANY SUPPLEMENT HERETO OR ANY INFORMATION CONTAINED HEREIN OR THEREIN WITHOUT THE PRIOR WRITTEN CONSENT OF NEW LEAF VENTURE ASSOCIATES III, L.P. (THE "***GENERAL PARTNER***"), OR TO USE IT FOR ANY PURPOSE OTHER THAN EVALUATING A POSSIBLE INVESTMENT IN THE FUND. EACH PERSON WHO HAS RECEIVED A COPY OF THIS MEMORANDUM (WHETHER OR NOT SUCH PERSON PURCHASES ANY INTERESTS) IS DEEMED TO HAVE AGREED (I) TO RETURN THIS MEMORANDUM AND ANY SUPPLEMENT HERETO TO THE MANAGEMENT COMPANY UPON REQUEST IF SUCH PERSON HAS NOT PURCHASED AN INTEREST, (II) NOT TO DISCLOSE ANY INFORMATION CONTAINED IN THIS MEMORANDUM OR ANY SUPPLEMENT HERETO EXCEPT TO THE EXTENT THAT SUCH INFORMATION WAS (A) PREVIOUSLY KNOWN BY SUCH PERSON THROUGH A SOURCE (OTHER THAN THE FUND, ITS PARTNERS OR ANY AFFILIATES OR AGENTS THERETO) NOT BOUND BY ANY OBLIGATION TO KEEP CONFIDENTIAL SUCH INFORMATION, (B) IN THE PUBLIC DOMAIN THROUGH NO FAULT OF SUCH PERSON OR (C) LATER LAWFULLY OBTAINED BY SUCH PERSON FROM SOURCES (OTHER THAN THE FUND, ITS PARTNERS OR ANY AFFILIATES OR AGENTS THERETO) NOT BOUND BY ANY OBLIGATION TO KEEP SUCH INFORMATION CONFIDENTIAL AND (III) TO BE RESPONSIBLE FOR ANY DISCLOSURE OF THIS MEMORANDUM, ANY SUPPLEMENT HERETO, OR THE INFORMATION CONTAINED HEREIN OR THEREIN, BY SUCH PERSON OR ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES.

PROSPECTIVE INVESTORS ARE URGED TO REQUEST ANY ADDITIONAL INFORMATION THEY MAY CONSIDER NECESSARY OR DESIRABLE IN MAKING AN INFORMED INVESTMENT DECISION. EACH PROSPECTIVE PURCHASER IS INVITED, PRIOR TO THE CONSUMMATION OF A SALE OF ANY INTERESTS TO SUCH PURCHASER, TO ASK QUESTIONS OF AND RECEIVE ANSWERS FROM THE MANAGEMENT COMPANY CONCERNING THE FUND AND THIS OFFERING AND TO OBTAIN ANY ADDITIONAL INFORMATION TO THE EXTENT THE MANAGEMENT COMPANY POSSESSES THE SAME OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, IN ORDER TO VERIFY THE ACCURACY OF THE INFORMATION CONTAINED IN THIS MEMORANDUM OR OTHERWISE.

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PROSPECTIVE INVESTORS ARE CAUTIONED NOT TO RELY ON THE PRIOR RETURNS SET FORTH HEREIN IN MAKING A DECISION WHETHER OR NOT TO PURCHASE THE INTERESTS OFFERED HEREBY. AN INVESTMENT IN THE FUND DOES NOT REPRESENT AN INTEREST IN ANY INDICATED INVESTMENT OR ANY INVESTMENT PORTFOLIO OF ANY RELATED OR OTHER INVESTMENT FUND, INCLUDING ANY INVESTMENT FUND MANAGED BY THE MANAGEMENT COMPANY OR ITS AFFILIATES. WHILE THIS MEMORANDUM INCLUDES REFERENCES TO A NUMBER OF RELATED AND AFFILIATED ENTITIES, INCLUDING CERTAIN AFFILIATED INVESTMENT POOLS AND VEHICLES, AN INVESTMENT IN THE FUND AS CONTEMPLATED HEREIN IS SEPARATE AND DISCRETE FROM ALL SUCH OTHER AFFILIATED INVESTMENT VEHICLES. FURTHER, ALTHOUGH THE PERFORMANCE OF SUCH OTHER AFFILIATED INVESTMENT VEHICLES MAY BE RELEVANT TO A GENERAL UNDERSTANDING OF THE GENERAL INVESTMENT EXPERIENCE AND PHILOSOPHY OF THE MANAGEMENT COMPANY AND ITS AFFILIATES, SUCH PERFORMANCE IS NOT AN INDICATOR OF THE RESULTS TO BE ACHIEVED BY THE FUND.

THE RETURN INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED OR VERIFIED BY ANY INDEPENDENT PARTY AND SHOULD NOT BE CONSIDERED REPRESENTATIVE OF THE RETURNS THAT MAY BE RECEIVED BY AN INVESTOR IN THE FUND. CERTAIN FACTORS EXIST THAT MAY AFFECT COMPARABILITY INCLUDING, AMONG OTHERS, THE DEDUCTION OF FEES AND EXPENSES AND THE PAYMENT OF CARRIED INTEREST (WHICH MAY BE DIFFERENT FOR THE FUND) AS WELL AS OTHER FACTORS AS NOTED WITH SUCH INFORMATION. FURTHER, CERTAIN INFORMATION RESPECTING UNREALIZED RETURNS IS BASED ON PUBLIC MARKET VALUATIONS THAT, AMONG OTHER THINGS, HAVE BECOME INCREASINGLY VOLATILE AND AS A RESULT MAY NOT BE INDICATIVE OF THE CURRENT VALUE OR THE ACTUAL VALUE TO BE REALIZED FROM ANY PARTICULAR PORTFOLIO INVESTMENT.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THE MEMORANDUM AS LEGAL, TAX, REGULATORY, FINANCIAL, ACCOUNTING OR OTHER ADVICE. EACH PROSPECTIVE INVESTOR SHOULD MAKE ITS OWN INVESTIGATION AND CONSULT ITS OWN ADVISORS AS TO THE LEGAL, TAX, REGULATORY, FINANCIAL, ACCOUNTING AND RELATED MATTERS CONCERNING THE FUND, THE OFFERING AND AN INVESTMENT IN THE INTERESTS. THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK AND IS SUITABLE ONLY FOR INVESTORS WHO ARE SOPHISTICATED WITH FINANCIAL MATTERS AND FAMILIAR WITH THE RISKS ASSOCIATED WITH INVESTMENTS SIMILAR TO THE ONES DESCRIBED HEREIN. NONE OF THE FUND, THE GENERAL PARTNER, THE MANAGEMENT COMPANY OR ANY OF THEIR AFFILIATES IS MAKING ANY REPRESENTATION OR WARRANTY TO AN INVESTOR REGARDING THE LEGALITY OF AN INVESTMENT IN THE FUND BY SUCH INVESTOR OR ABOUT THE INCOME AND OTHER TAX CONSEQUENCES TO IT OF SUCH AN INVESTMENT.

UNLESS OTHERWISE INDICATED, ALL INFORMATION CONTAINED HEREIN RESPECTING RATES OF RETURN OR OTHER PERFORMANCE DATA, WHETHER REALIZED OR UNREALIZED, IS QUALIFIED BY THE RELEVANT APPENDICES, FOOTNOTES, AND ENDNOTES HEREIN AND IS ON A GROSS RETURN BASIS BEFORE GIVING EFFECT TO MANAGEMENT FEES, CARRIED INTEREST, OTHER EXPENSES AND TAXES, WHICH, IF GIVEN EFFECT TO, WOULD REDUCE SUCH RETURNS AND, IN THE AGGREGATE, ARE EXPECTED TO BE SUBSTANTIAL. WHERE NET RETURNS ARE PROVIDED, SUCH RETURNS GIVE EFFECT TO MANAGEMENT FEES, CARRIED INTEREST AND OTHER EXPENSES. FURTHER, INFORMATION RESPECTING INVESTMENT PERFORMANCE IS BASED ON CERTAIN INVESTMENT POSITIONS SELECTED AS REPRESENTATIVE AND ANALOGOUS TO THE TARGETED INVESTMENT CATEGORIES FOR THE FUND. SUCH INVESTMENT PERFORMANCE INFORMATION IS NOT REPRESENTATIVE OF INVESTMENT PERFORMANCE BY NEW LEAF AND ITS AFFILIATED INVESTMENT MANAGERS IN OTHER INVESTMENT ACTIVITIES, WHICH HAVE NOT BEEN INCLUDED HEREIN.

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INVESTORS SHOULD CAREFULLY REVIEW THE INFORMATION CONTAINED IN THIS MEMORANDUM IN SECTION IX, "CERTAIN INVESTMENT CONSIDERATIONS," AND SECTION X, "CERTAIN TAX AND ERISA CONSIDERATIONS." INVESTMENT IN THE INTERESTS IS SUITABLE ONLY FOR SOPHISTICATED INVESTORS AND REQUIRES THE FINANCIAL ABILITY AND WILLINGNESS TO ACCEPT THE RISKS AND LACK OF LIQUIDITY INHERENT IN AN INVESTMENT IN THE INTERESTS. IN PARTICULAR, ONE OR MORE SUBSIDIARIES OF THE FUND OR OTHER ENTITIES IN WHICH THE FUND INVESTS DIRECTLY OR INDIRECTLY MAY QUALIFY AS "PASSIVE FOREIGN INVESTMENT COMPANIES" OR "CONTROLLED FOREIGN CORPORATIONS" FOR U.S. FEDERAL INCOME TAX PURPOSES, WHICH COULD RESULT IN ADVERSE TAX CONSEQUENCES TO INVESTORS THAT ARE U.S. PERSONS.

THIS MEMORANDUM CONTAINS A SUMMARY OF THE PARTNERSHIP AGREEMENT AND CERTAIN OTHER DOCUMENTS REFERRED TO HEREIN. HOWEVER, THE SUMMARIES IN THIS MEMORANDUM DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO AND QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE ACTUAL TEXT OF THE RELEVANT DOCUMENT, COPIES OF WHICH WILL BE PROVIDED TO EACH PROSPECTIVE INVESTOR UPON REQUEST. EACH PROSPECTIVE INVESTOR SHOULD REVIEW THE PARTNERSHIP AGREEMENT, THE SUBSCRIPTION AGREEMENT AND SUCH OTHER DOCUMENTS FOR COMPLETE INFORMATION CONCERNING THE RIGHTS, PRIVILEGES AND OBLIGATIONS OF INVESTORS IN THE FUND. IN THE EVENT THAT THE DESCRIPTIONS OR TERMS OF THE MEMORANDUM ARE INCONSISTENT WITH OR CONTRARY TO THE DESCRIPTIONS OR TERMS OF THE PARTNERSHIP AGREEMENT, THE SUBSCRIPTION AGREEMENT OR OTHER DOCUMENTS, THE PARTNERSHIP AGREEMENT, THE SUBSCRIPTION AGREEMENT OR SUCH OTHER DOCUMENTS SHALL CONTROL. THE GENERAL PARTNER AND ITS AFFILIATES RESERVE THE RIGHT TO MODIFY THE TERMS OF THE OFFERING AND THE INTERESTS DESCRIBED IN THIS MEMORANDUM, AND THE INTERESTS ARE OFFERED SUBJECT TO THE GENERAL PARTNER'S ABILITY TO REJECT ANY COMMITMENT IN WHOLE OR IN PART.

CERTAIN INFORMATION IN THIS MEMORANDUM HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE ALTHOUGH NONE OF THE FUND, GENERAL PARTNER, THE MANAGEMENT COMPANY OR THEIR RESPECTIVE AFFILIATES GUARANTEE ITS ACCURACY, COMPLETENESS OR FAIRNESS. OPINIONS AND ESTIMATES MAY BE CHANGED WITHOUT NOTICE.

THE FUND IS OFFERING INTERESTS TO U.S. PERSONS THAT ARE "QUALIFIED PURCHASERS" AS DEFINED IN THE INVESTMENT COMPANY ACT AND "ACCREDITED INVESTORS" AS DEFINED IN THE SECURITIES ACT.

AN INVESTMENT IN THE FUND MAY BE SUBJECT TO INCREASING REGULATIONS AND GOVERNMENTAL OVERSIGHT, INCLUDING, FOR EXAMPLE, THE BANK SECRECY ACT AND THE USA PATRIOT ACT OF 2001, INCLUDING THEIR RESPECTIVE IMPLEMENTING REGULATIONS WHICH, AMONG OTHER THINGS, CONSTITUTE THE ANTI-MONEY LAUNDERING REGULATIONS. THERE CAN BE NO ASSURANCE THAT SUCH RULES WILL NOT REQUIRE VARIOUS INVESTOR DISCLOSURES TO, AMONG OTHERS, DOMESTIC AND FOREIGN GOVERNMENT AUTHORITIES.

YOUR INVESTMENT WILL BE DENOMINATED IN UNITED STATES DOLLARS ($) AND, THEREFORE, WILL BE SUBJECT TO ANY FLUCTUATION IN THE RATE OF EXCHANGE BETWEEN U.S. DOLLARS ($) AND THE CURRENCY OF YOUR OWN JURISDICTION. SUCH FLUCTUATIONS MAY HAVE AN ADVERSE EFFECT ON THE VALUE, PRICE OR INCOME OF YOUR INVESTMENT.

ALL SECURITIES INVESTMENTS RISK THE LOSS OF CAPITAL. NO GUARANTEE OR REPRESENTATION IS MADE THAT THE FUND WILL ACHIEVE ITS INVESTMENT OBJECTIVE. AN INVESTMENT IN THE FUND IS SPECULATIVE AND INVOLVES CERTAIN CONSIDERATIONS AND

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CERTAIN INVESTMENT CONSIDERATIONS. PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS.

THE FUND INTENDS TO CONDUCT ITS INVESTMENT ACTIVITIES THROUGH A NUMBER OF SUBSIDIARIES AND AFFILIATES THAT MAY BE ESTABLISHED FROM TIME TO TIME IN ONE OR MORE JURISDICTIONS, EACH OF WHICH MAY HAVE VARYING TAX EFFECTS ON THE FUND AND PARTNERS. AS SUCH THERE CAN BE NO ASSURANCE AS TO THE CONSEQUENCES OF SUCH ACTIVITIES. INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE RISK OF AN INVESTMENT IN THE FUND. SEE ALSO SECTION X, "CERTAIN TAX AND ERISA CONSIDERATIONS."

PROSPECTIVE INVESTORS SHOULD REVIEW THE OFFERING NOTICES BEGINNING IN SECTION XIV FOR INFORMATION RELATING TO THE OFFERING AND SALES OF THE INTERESTS TO INVESTORS IN VARIOUS STATES OF THE U.S. AS WELL AS CERTAIN NON-U.S. JURISDICTIONS.

IN ACCORDANCE WITH U.S. TREASURY REGULATIONS GOVERNING PRACTICE BEFORE THE INTERNAL REVENUE SERVICE (CIRCULAR 230), THE FUND HEREBY INFORMS THE INVESTORS THAT (A) THE INFORMATION BELOW (OR OTHERWISE CONTAINED IN THIS DOCUMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY THE INVESTORS FOR THE PURPOSE OF AVOIDING PENALTIES THAT THE U.S. INTERNAL REVENUE SERVICE MAY ATTEMPT TO IMPOSE ON AN INVESTOR, (B) THE INFORMATION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTION OR MATTERS ADDRESSED BY THE WRITTEN INFORMATION AND (C) INVESTORS SHOULD SEEK TAX ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

Forward-Looking Statements

CERTAIN INFORMATION CONTAINED IN THIS MEMORANDUM CONSTITUTES "FORWARD-LOOKING STATEMENTS," WHICH CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS "MAY," "WILL," "SHOULD," "EXPECT," "ANTICIPATE," "PROJECT," "ESTIMATE," "INTEND," "CONTINUE," OR "BELIEVE," OR THE NEGATIVES THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. DUE TO VARIOUS RISKS AND UNCERTAINTIES, INCLUDING, WITHOUT LIMITATION, THOSE SET FORTH IN SECTION IX "CERTAIN INVESTMENT CONSIDERATIONS", ACTUAL EVENTS OR RESULTS OR THE ACTUAL PERFORMANCE OF THE FUND MAY DIFFER MATERIALLY FROM THOSE REFLECTED OR CONTEMPLATED IN SUCH FORWARD-LOOKING STATEMENTS. WHILE ASSUMPTIONS UNDERLYING VARIOUS STATEMENTS AS TO FUTURE PERFORMANCE ARE BELIEVED TO BE REASONABLE IN NATURE, EXISTING AND PROSPECTIVE INVESTORS SHOULD MAKE THEIR OWN ASSESSMENTS AS TO SUCH ASSUMPTIONS AND THE ASSOCIATED RISKS, INCLUDING THE LIKELIHOOD OF THE FUND ACHIEVING CORRESPONDING RESULTS, ALL OF WHICH ARE SUBJECT TO RISKS AND UNCERTAINTIES MANY OF WHICH ARE BEYOND THE CONTROL OF THE FUND (SEE SECTION IX "CERTAIN INVESTMENT CONSIDERATIONS"). AS SUCH, NO ASSURANCE IS GIVEN AS TO THE REALIZATION OF ANY SUCH FUTURE PERFORMANCE. NO REPRESENTATION OR WARRANTY IS MADE AS TO FUTURE PERFORMANCE OR SUCH FORWARD-LOOKING STATEMENTS. UNLESS OTHERWISE INDICATED, INFORMATION CONTAINED HEREIN IS AS OF MARCH 31, 2014. THE DELIVERY OF THIS MEMORANDUM DOES NOT IMPLY THAT ANY OTHER INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO MARCH 31, 2014.

None of New Leaf Ventures I, L.P., New Leaf Ventures II, L.P., NLV-III, the Management Company or any of their affiliates have any affiliation with Credit Suisse nor any its affiliates (collectively, "Credit Suisse"). Credit Suisse has not compiled, reviewed or participated in the preparation of any of the performance or other information contained in this Memorandum and assumes no responsibility therefor. Consequently, in no respects *should Credit Suisse be considered to have approved or disapproved of any of the information set forth in this Memorandum. "Sprout", "Sprout Group" and the symbols associated therewith are registered trademarks of Credit*

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Suisse. These trademarks remain the exclusive property of Credit Suisse. The Interests being offered by NLV-III are not sponsored, endorsed, promoted, offered or sold by Credit Suisse, and Credit Suisse makes no representation regarding the advisability of investing in NLV-III.

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I. EXECUTIVE SUMMARY

FUND OVERVIEW

New Leaf Ventures III, L.P. ("***NLV-III***" or the "***Fund***") is being formed by New Leaf Venture Partners, L.L.C. ("***New Leaf***" or the "***Management Company***"), an established and proven leader in health care technology investing. NLV-III will be the seventh private equity fund focused on venture and growth stage investments in healthcare and life sciences companies raised by the partners of New Leaf. NLV-III is the successor fund to New Leaf Ventures I, L.P. ("***NLV-I***") and New Leaf Ventures II, L.P. ("***NLV-II***"), which raised capital commitments of $310 million and $450 million respectively. The New Leaf funds follow four Sprout Capital funds that included over $1.0 billion of investments in healthcare technology companies.[1] In total, the New Leaf team has invested over $1.6 billion and have generated one of the industry's leading track records by consistently outperforming their peers in the healthcare venture capital market (based on Cambridge Associates benchmarks[2]) and exceeding relevant public market indices by substantial margins.[3,4]

The Fund will seek to invest in a diversified portfolio composed of an estimated 24 to 28 healthcare technology companies, most of which will be U.S. based and at the product development or commercialization phase. Fund investments will typically take the form of venture capital or growth capital transactions in private companies, or as structured transactions in small capitalization public companies. The Fund will establish meaningful ownership positions and in most cases will actively manage the investments with representation on the boards of directors. The Fund will seek to generate returns that significantly outperform relevant public market equity indices by creating a portfolio that optimally balances the risks, timelines, and capital intensity associated with developing and commercializing innovative healthcare technologies with the financial market realities that are the backdrop for a venture capital fund focused on this sector.

The Fund is targeting aggregate capital commitments from limited partners of **$375 million**.

THE NEW LEAF TEAM

New Leaf is one of the most respected, successful, and established brands in healthcare technology investing, a reputation built over the last 18 years by a highly experienced and stable team of partners. NLV-III will be managed by this team of 6 senior partners, 5 of whom have worked together continuously for a decade or more. These partners bring a strong combination of significant and relevant industry operating experience and successful venture capital investment experience to NLV-III.

The Managing Directors of NLV-III are Philippe Chambon MD PhD, Jeani Delagardelle, Ron Hunt, Vijay Lathi, and Liam Ratcliffe MD PhD. Philippe, Jeani, Ron, and Vijay have worked together for 15 years over six prior funds at New Leaf and the Sprout Group. Liam joined the

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[1] Sprout Group is a venture capital affiliate of Credit Suisse

[2] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" including endnote C in Appendix 4 regarding information provided by Cambridge Associates.

[3] S&P500, S&P Healthcare, NASDAQ Composite, and Russell 3000. See endnote F in Appendix 4.

[4] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices; Appendix 3" (regarding the PME+ methodology) including endnotes B, D, E and F in Appendix 4.

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New Leaf team five years ago and has made significant contributions to the NLV-II portfolio. Jim Niedel MD PhD has worked with the team continuously for over twelve years and will continue to be a senior member of the NLV investment team for NLV-III, but will change his status to Venture Partner with the closing of NLV-III. In this role, Jim will work full-time with NLV during the NLV-III investment period in building and managing the NLV-III portfolio, and he will continue with full oversight and portfolio management responsibilities for NLV-I and NLV-II. With 80+ years of venture investing experience and decades of operating experience in the industries in which they invest, this 6 member senior team (the "***Fund Managers***") brings highly relevant and complementary experience to bear on this Fund. This team of partners is further strengthened by a group of additional investment professionals who add highly relevant scientific and life sciences investment experience and have made significant contributions to the NLV-II portfolio.

The New Leaf team is distinctive in that its members have played a leadership role in the healthcare venture capital industry over the last two decades. During this time, the Fund Managers have demonstrated the ability to source high quality investments at all stages, including start-ups, follow-on private investments, company restructurings, and structured public investments. The Fund Managers source deals through a range of activities that rely on their deep relationships in academia, industry, and the investment community (private and public), resulting in differentiated and, in many cases, proprietary deal flow. Once initial investments are made, the Fund Managers are focused on building value in technology based healthcare companies by creating strong management teams and then collaborating with them to develop, manage, and execute capital efficient business plans. Through these efforts, the Fund Managers have earned a reputation as value-added investors and have created some of the best performing portfolios of healthcare technology investments in the industry.

LONG TERM TRACK RECORD

Over an 18 year period and across the portfolios of 6 distinct venture funds focused on healthcare technology investments, the Fund Managers have delivered net performance that has consistently outperformed venture industry benchmarks and relevant public equity market indices[5,6]. The Fund Managers' track record is notable for the following reasons:

- **Performance has been consistently top-quartile since the mid-1990s:** NLV-I, NLV-II and the healthcare technology portfolios in the Sprout Capital funds have invested over $1.6 billion in healthcare technology companies since 1995. Over nearly two decades, returns have consistently exceeded Cambridge Associates' top-

[5] Except as otherwise expressly noted, all performance information contained herein, including rates of return, is as of March 31, 2014 and is unaudited. The performance information is based on the cumulative invested capital, cumulative cash dividends and realized and unrealized sales proceeds in portfolio companies. Where designated as "gross", the performance information is presented on a gross basis with regard to expenses and does not reflect deductions for any management fees, the general partner's carried interest or other expenses. Where designated as "net", the performance information is presented on a net basis after giving effect to management fees, the general partner's carried interest and other expenses. Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" and the endnotes in Appendix 4 for a more detailed description of the performance of the NLV-I, NLV-II and the Sprout Funds. An investment in the Fund does not represent an interest in any indicated investment or any investment portfolio of any related or other investment fund, including any investment or fund managed by the Fund Managers. Disclosure of past performance herein is for informational purposes only and is not indicative of future results.

[6] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices; Appendix 3" including endnote C (regarding information provided by Cambridge Associates).

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quartile benchmarks for U.S. venture capital healthcare and/or U.S. total venture capital.[7]

- **Exceeded relevant public equity indices by substantial margins on all realized funds:** Members of the New Leaf team invested $1.02 billion in the portfolios of healthcare technology investments in four Sprout Capital funds (Sprout Capital IX, L.P., Sprout Capital VIII, L.P., Sprout Capital VII, L.P. and Sprout Growth II, L.P.), and these are now fully realized (or near fully realized in the case of Sprout Capital IX, L.P.). The net annual IRR's on the healthcare technology portfolios in these funds outperformed the S&P 500 (568 – 2,258 bps), S&P Healthcare (302 – 2,064 bps), NASDAQ Composite (451 – 2,125 bps), and the Russell 3000 (502 – 2,215 bps) using the Public Market Equivalent Plus (PME+) methodology[8]. Although PME+ methodology is most informative when used to analyze funds whose returns are mature, the PME+ methodology shows that NLV-I is outperforming these same indices, and shows encouraging results for NLV-II despite its relative immaturity.

It is this consistently high level of return over an 18 year period, spanning several challenging investment cycles, that creates a truly unique track record within the venture capital sector.

The chart below illustrates details of the gross and net performance by fund.

Chart 1: Returns by Fund

As of March 31, 2014

($ in millions)

Fund:	Growth II HCT	Sprout VII HCT	Sprout VIII HCT	Sprout IX HCT	NLV-I	NLV-II
Fund Size:	$15M Fund *	$95M Fund *	$147M Fund *	$690M Fund *	$310M Fund	$450M Fund
Paid-In Capital	$15M	$95M	$147M	$690M	$303M	$407M
Vintage Year:	(1993 - 2007)	(1995 - 2011)	(1998 - 2012)	(2000)	(2005)	(2008)
First Investment	1995	1995	1998	2000	2005	2008
Gross Fund Returns						
Total Multiple N	4.4x	2.6x	1.7x	2.0x	2.1x	1.8x
Realized Multiple N	4.4x	2.6x	1.7x	2.2x	1.7x	2.0x
Total IRR D	44%	19%	10%	15%	19%	30%
Realized IRR D	44%	19%	10%	17%	23%	33%
Net Fund Returns						
Net Total Multiple N	3.69x *	2.17x *	1.49x *	1.66x *	1.75x	1.45x
Net Total IRR D	28.9% *	12.0% *	6.0% *	9.3% *	12.0%	16.7%
Net Distributed / Paid-In Multiple F	**3.69x** *	**2.17x** *	**1.49x** *	**1.55x** *	**0.51x**	**0.50x**
Net Distributed $s to LPs	*$56.3*	*$207.0*	*$218.7*	*$1,071.5*	*$154.7*	*$204.2*
Interim Fund Liquidity Metrics						
(Distributed + Public) / Paid-In Multiple G	--	--	--	1.62x	0.74x	1.18x
(Distributed + Liquid Public) / Paid-In Multiple H	--	--	--	1.58x	0.57x	0.75x
IRR Outperformance Versus Public Indices						
PME+ (Basis Points over S&P 500 Healthcare Sector) **	+2,064 bps	+302 bps	+441 bps	+776 bps	+201 bps	-187 bps
PME+ (Basis Points over S&P 500) **	+2,258 bps	+568 bps	+587 bps	+638 bps	+496 bps	+275 bps
PME+ (Basis Points over Russell 3000) **	+2,215 bps	+554 bps	+502 bps	+565 bps	+446 bps	+218 bps
PME+ (Basis Points over Nasdaq Composite) **	+2,125 bps	+554 bps	+725 bps	+451 bps	+181 bps	-21 bps

NLV and Sprout fund data as of March 31, 2014. Sprout fund statistics computed based on healthcare portfolio within Sprout.
* See Appendix 2 and endnotes A and E in Appendix 4. Based on synthetic funds with assumptions around recycling and fee structure.
** Based on Public Market Equivalent (PME+) methodology. See Appendix 3 and endnotes A, B, E and G in Appendix 4.

Please Section XIII: "Appendices" for definitions of terms and/or methodology.

[7] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" and endnotes B (regarding public indices) and C (regarding information provided by Cambridge Associates) in Appendix 4.

[8] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices", Appendix 3 (regarding the PME+ methodology) and to endnotes B, D, E and F in Appendix 4.

For a full overview of investment performance, please refer to Section III: Summary of Historical Investment Performance.

OPPORTUNITY IN THE HEALTHCARE SECTOR

The Fund Managers believe a number of macro market factors have aligned to create attractive and lasting conditions for NLV-III's targeted investment strategy in healthcare technology. These macro market factors include the following:

- **Strong and Sustained Growth in Global Healthcare Markets**: Healthcare is one of the strongest and most dynamic markets within the global economy, with powerful demographic forces expected to drive growth at rates that will outpace GDP in major economies for at least the next decade.[9] This steady and sustained market growth creates a positive macro environment for investment in the sector.

- **Significant Opportunity Created By Healthcare Reform & Restructuring:** Through at least the next decade, the healthcare industry will be going through a period of significant restructuring as government, private insurance companies, and employers implement broad reform initiatives that seek to slow the growth of healthcare spending and limit the threat this burden creates to their long term fiscal viability. In the U.S., the federal government laid the foundation for these changes with two key pieces of legislation: the *Patient Protection and Affordable Care Act* ("ACA") and the *Health Information Technology for Economic and Clinical Health Act* ("HITECH Act"), which are designed to reduce costs, improve quality, and significantly expand the percentage of the population with access to healthcare services. Importantly, a component of the legislation sets aside funding in the form of direct incentives to healthcare providers to be used to purchase technologies needed to meet the legislation's requirements. As part of healthcare reform, government and private payers will need to migrate their traditional fee-for-service reimbursement models towards more value-centered approaches that reward outcomes, efficiency, and reduction in waste. Payers are approaching this goal by slashing costs in areas where viable lower cost solutions are available, while at the same time investing much more in the adoption of innovative new products and solutions which can improve outcomes and deliver quantifiable value, even when considering their additional costs and premium pricing. During this period of substantial change in the healthcare system, the Fund Managers expect to see an unusually large number of opportunities to fund companies developing innovative and impactful new therapeutic products as well as tools and applications that enable the implementation and realization of healthcare reform's goals and objectives.

- **Rapid Acceleration in Innovation:** The Fund Managers believe an unprecedented period of medical innovation is emerging as decades of research into molecular mechanisms of disease is being translated into a steady stream of safer and more effective medicines and the biomarkers to guide their use. Importantly, these products are providing enormous improvements in both life expectancy and quality of life for patients with many serious, life-threatening diseases. Although they will come with premium pricing, these products can decrease the overall costs to the healthcare system by reducing reliance on equally costly, but less effective and more toxic treatments, by

[9] CMS, OECD, Eurostat

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reducing clinic visits and hospital admissions and by controlling or curing disease so that the patient can return to a fully productive life. At the same time as this revolution in the biological sciences is unfolding, exponential increases in the ability to manage, process, and store information at low cost are coming out of the information technology (IT) industry. This rapid technological progress in IT is allowing the creation of entirely new systems and applications that will fundamentally improve how healthcare systems monitor and manage patients across the full range of care settings. The Fund Managers believe the massive expansion and integration of capabilities occurring in biology and information technology is enabling a period of innovation in healthcare that sets a uniquely positive environment for the investment of NLV-III.

- **More Favorable Regulatory Environment For New Drug Approvals:** Increasing numbers of FDA drug approvals and recently passed U.S. regulatory legislation are reflective of a more favorable regulatory environment. The number of new drug approvals by FDA in both 2012 (39 NDAs) and 2013 (27 NDAs) trended meaningfully higher compared to the previous 6 years and versus historic averages[10]. In addition, the *Food and Drug Administration Safety and Innovation Act* (FDASIA) was signed into law on July 9, 2012, providing for additional tools to enable the FDA to promote innovation by streamlining parts of the approval process and improving communication and administrative processes between the agency and pharmaceutical and biotech companies. Chief among these new tools is the "Breakthrough Therapy" designation. This new designation helps the FDA assist drug developers to expedite the development and review of new drugs with preliminary clinical evidence that indicates the drug may offer a substantial improvement over available therapies for patients with serious or life-threatening diseases. Overall, these initiatives and others, both in the U.S. and abroad (e.g., E.U. and Japan), have made the regulatory environment more favorable for investors in the biopharmaceutical sector, and have reduced some of the uncertainty and risk in a critical aspect of drug development.

- **Capital Markets And Industry Dynamics Are Favorable For New Investments & Exits:** Since the most recent peak in fundraising in 2008, it has been estimated that the life sciences venture capital fundraising has contracted by 68%, from $7.8 billion in 2008 to $2.5 billion in 2012[11]. The Fund Managers believe that there has been a corresponding decline in the number of active venture capital firms investing into life sciences companies (especially earlier stage), resulting in fewer investors competing for new deals. At the same time, large and mid-sized biopharmaceutical companies have become increasingly dependent on development stage companies as the source of innovation and new products to supplement R&D pipelines and stimulate future growth. Most of these big companies are committing a large and growing portion of their R&D budgets to external facing search and evaluation efforts that have the goal of obtaining assets through high value mergers, acquisitions, and partnerships, which disproportionally benefit smaller, venture-backed, development stage companies. In the years ahead, we believe that this trend is likely to continue, and possibly accelerate, driven by expected patent expirations on commercial products and continued low productivity of pharma R&D. The Fund Managers believe these dynamics offer venture

[10] Food and Drug Administration. Center For Drug Evaluation and Research

[11] Dow Jones; Fenwick & West Analysis in 2012 Trends in Terms of Life Science Venture Financings

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and growth stage investors attractive conditions for both new investments and exits from existing investments for the foreseeable future.

The Fund Managers view this alignment of critical market factors as unprecedented. Each of these factors individually has a direct impact on the level of risk and the potential for returns in the healthcare technology sector. However, the positive trends in all of them occurring at the same time should create a uniquely positive environment to execute NLV-III's targeted strategy within the sector.

INVESTMENT STRATEGY

New Leaf's investment strategy is differentiated in the venture capital industry in terms of its sector focus, specific approaches within each sector, and the depth of experience and long-term track record that supports each element of the strategy. The Fund's primary focus will be on investments in the **Biopharmaceutical** and **Information Convergence** sectors, with a secondary focus on **Medical Devices** and **Biological Research Tools & Infrastructure**. Investments will be predominantly in the U.S., but could include a small number of investments in other parts of the world (e.g., Western Europe or Canada). The focus within each sector will be the following:

Biopharmaceuticals: As in NLV-I and NLV-II, biopharmaceutical investments will be the core focus for NLV-III and will comprise approximately 50% - 60% of the Fund. The Fund will typically invest in development stage and commercial stage private companies and in publicly traded small capitalization companies where the investments will be made mostly through structured transactions. The portfolio will emphasize companies developing targeted therapeutics that address molecular mechanisms of disease, where validated biomarkers can be utilized to positively bias probabilities of success and reduce time and cost of development compared to historical averages. These companies exemplify some of the key characteristics the Fund Managers seek across the portfolio - namely large, unmet medical needs, strong science, well differentiated technologies and high quality pre-clinical and clinical development programs led by experienced management teams.

The Fund Managers believe that NLV-III will have the opportunity to invest in compelling biopharmaceutical opportunities and that these will have attractive risk-return profiles for a number of reasons, including the following:

- For the past decade, biopharmaceutical companies have been shifting their research and development focus towards products that target mechanisms of disease at the molecular level. Clinical programs for these types of products are typically smaller, more capital efficient and have higher probabilities of success. These improvements are achievable because precise biomarker testing enables a focus on only those patients where the specific molecular mechanism is known to play an important role in the disease process. By including only these patients in the clinical programs for these targeted products, the probability of detecting critical efficacy signals is significantly increased, even with relatively small numbers of patients;

- Targeted development programs are benefiting from an improving regulatory environment, as the FDA is demonstrating clear interest in working constructively with companies to bring these types of high-impact therapeutics to market more quickly and efficiently. This spirit of cooperation was covered thoughtfully in a recent New England

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Journal of Medicine editorial (November 2013), where Janet Woodcock, MD, the FDA's Director of the Center for Drug Evaluation and Research and other senior FDA staff members as co-authors, discussed the FDA's new breakthrough therapy designation that can be granted to expedite the review and approval of new therapies to treat people with serious or life threatening illnesses where inadequate treatment options exist. They state that "The genesis of the new designation can be traced to several emerging trends in drug discovery and development. Most notable is the rise of molecularly targeted therapies, often paired with companion diagnostics". The editorial goes on to say that "Once a drug is designated as a breakthrough therapy, the FDA commits to working particularly closely with the drug sponsor to devise the most efficient pathway for generating additional evidence needed about safety and efficacy". The breakthrough therapy designation was created under FDASIA in 2012, and since that time 26 breakthrough therapy designations have been granted on 80 requests;[12]

- The pharmaceutical industry's commercial model is also improving with the shift in focus to targeted therapeutics, as these therapies can: (a) provide significant improvements in efficacy and safety over current standards of care; (b) offer important clinical benefits in terms of increased life expectancy and improved quality of life; (c) positively impact high morbidity diseases, many of which have primarily expensive, but inadequate treatments available (e.g., cancer and autoimmune diseases); and (d) generate compelling economic benefits to payers, even when they carry premium pricing;

- Finally, large and mid-sized biopharmaceutical companies have recognized the inefficiency of their internal R&D efforts and have deemphasized many of their own expensive, high risk, "blockbuster" programs. Increasingly, these companies are "externalizing" a large portion of their R&D activity by acquiring, licensing, or partnering with smaller biotech companies that are focused on developing the novel targeted therapeutics mentioned above.

The Fund Managers believe the net result for investors is an improving risk-return equation for biopharmaceutical investments, which should translate into higher returns in the sector.

Information Convergence: Information convergence investments will be the second core focus for NLV-III, expected to comprise up to 25% of the Fund. Building on the leadership established during the NLV-II investment period along with significant experience from past Sprout funds, the Fund Managers will invest NLV-III in companies seeking to improve efficiency and reduce overall costs to the healthcare system through the generation, analysis, and application of information from research to diagnosis and delivery of care. Investments in this sector will be at the commercial stage at the time of initial investment, or will be expected to reach the commercial stage during the projected timeline of the investment.

Central to this opportunity is the acute structural deficit in the U.S., with healthcare liabilities the single largest contributor and the healthcare reform initiatives that were designed in part to address these critical fiscal issues. Broad scale deployment of new information technology will

[12] New England Journal of Medicine, November 14, 2013: Expediting Drug Development – The FDA's New "Breakthrough Therapy" Designation

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play a critical role in enabling the necessary structural changes to the healthcare system. The HITECH Act created a $25.9 billion[13] Federal Government funded catalyst for the adoption of information technology in healthcare in the U.S., and this is stimulating significant investment in upgrading the information infrastructure at the provider level. This industry-wide technology upgrade moves the vast majority of providers onto electronic systems, which offers immediate efficiencies to their businesses and lays the foundation for the adoption of new targeted information based applications in the future. These investments and legislative actions by the U.S. government, and the subsequent response by insurers, providers and patients, are driving a dramatic increase in spending on healthcare information technology (HIT), benefitting the companies providing technology solutions that reduce cost and waste, drive efficiency, and improve the quality of patient care.

The opportunity in information convergence also benefits significantly from the technologies and infrastructure that have been developed and implemented outside of healthcare, such as cloud computing, wireless communications, web-delivered software-as-a-service, and sensor technology. Small companies drawing heavily off these existing technologies are able to optimize their product through rapid iterations driven by user feedback, thereby reducing risk and capital requirements, and leading to more predictable timelines, similar to what has been seen in the broader information technology arena. The Fund Managers believe that smaller, focused companies will play a key role in developing and deploying information based products that address discrete problems within the U.S. healthcare market, and that a large number of these will be compelling investment opportunities for NLV-III.

Medical Devices: Given the Fund Managers' view that the operating and exit environment for companies in this sector will be more challenging due to increased regulatory and reimbursement uncertainty, NLV-III will have somewhat less exposure to this sector than previous funds. The Fund will focus on investments in companies that are developing innovative and differentiated medical devices, targeting large market opportunities that offer the potential to meaningfully reduce overall patient treatment costs in high morbidity disease settings through substantial efficacy and safety benefits versus existing standards of care. Importantly, the focus will be on opportunities that have established regulatory approval pathways and clear regulatory precedents, or are already at the commercial stage at the time of initial investment. The objective will be to identify investment opportunities with later stage risk profiles that can be expected to thrive in the current environment. Although the number of deals in this sector is likely to be somewhat lower than in previous funds, with the later stage focus, it is likely that the size of investments in this sector will be larger.

Biological Research Tools & Infrastructure: The rapid growth of this sector is being fuelled by many of the same biomedical advances that are impacting health care more broadly, such as personalized medicine and DNA sequencing. Smaller companies have always been a prolific source of innovative new research tools, leading to high M&A interest among the large commercial players in this sector. Moreover, because new reagents and research tools are not subject to the risks of clinical trials, regulatory approvals or payer reimbursement it is possible to build high-gross margins businesses that reach break-even on manageable timelines and budgets. The Fund will approach this sector opportunistically and will seek to invest in a small

[13] U.S. Department of Health and Human Services. Actuarial estimate as of January 2012.

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number of commercial stage companies with novel and clearly differentiated products targeting defined and established high growth market segments.

DEAL FLOW AND INVESTMENT PROCESS

The Fund Managers have a proactive approach to deal sourcing, which targets both private and public opportunities. The established and proven sourcing activities rely on diverse networks of deal sources that have been built and cultivated over two decades and focus on identifying compelling healthcare technology investment opportunities, at attractive time points for investment. These efforts balance the inherent attractiveness of an innovative technology with the selection of the appropriate investment stage, offering an optimal risk-adjusted return potential and multiple paths to realization and liquidity.

The Fund Managers have refined and successfully executed this investment process over many years, and it is an integral part of the firm's culture. New Leaf's investment philosophy and process emphasize a team approach to maximizing investment returns, focusing the most appropriate resources within the firm to deal sourcing, rigorous investment analysis, deep involvement with portfolio companies and active management of financings and exits.

DISTINCTIVE FEATURES OF NEW LEAF

Over the last two decades, New Leaf has established itself as one of the premier brands in healthcare technology investing as a result of a powerful combination of:

- one of the most established and stable teams in the venture capital industry with deep and complementary operating and investing experience;

- a long term track record across portfolios of healthcare technology investments in six distinct venture funds and over $1.6 billion in total invested capital that has demonstrated consistent outperformance versus venture industry peers and relevant public market indices (S&P 500, S&P Healthcare, NASDAQ Composite, and Russell 3000)[14];

- an evolving investment strategy, focused on a diversified portfolio of investments across sectors, stages (start-ups to growth equity), and therapeutic areas that has proven to generate returns through both up and down phases of macro investment cycles;

- a hands-on approach to working with management teams as board members to optimize corporate strategy, develop and refine clinical, regulatory, and operating plans, recruit world-class talent, and drive business development activities that lead to value-maximizing follow-on financings, partnerships, and M&A transactions; and

- a reputation for intellectual rigor, hard work, value added contributions, and constructive collaboration that makes New Leaf a sought after lead investor by outstanding entrepreneurs and a preferred co-investor amongst a broad range of top quality investors.

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[14] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" including endnotes B, C, F and G in Appendix 4.

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NLV-III Investment Opportunity

The objective of NLV-III is to invest in a portfolio of healthcare technology companies that offer attractive risk-adjusted returns. The companies that comprise the portfolio will be selected and managed by a team of highly experienced senior partners who have developed and proven their investment process over many years and multiple funds. The investment strategy for NLV-III is similar to the strategies pursued in prior funds, in that it will have a core focus on biopharmaceutical investments with a balance of investments across other healthcare technology sectors. Given the strength and stability of the team, the consistency and the depth of the track record, and the positive market forces and investment conditions that are expected to be in place during the life of the Fund, the Fund Managers believe NLV-III offers investors an opportunity for attractive returns.

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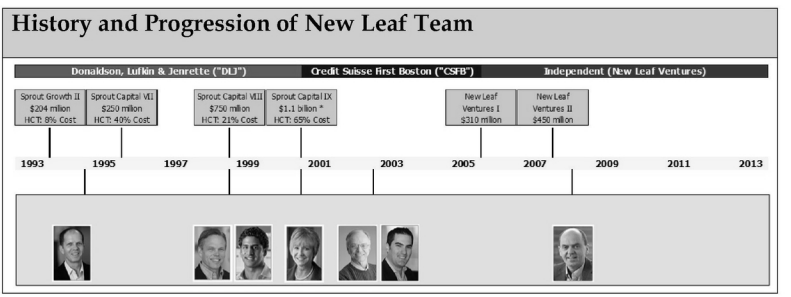
II. THE TEAM

NLV-III will be managed by the New Leaf team, which currently manages NLV-I, NLV-II, and provides sub-advisory services managing the remaining healthcare technology investments in the Sprout Funds. The team of six senior partners, five of whom have worked together continuously for over a decade, stands out in the industry for its depth of accomplishments, track record of consistent investment success, and its organizational stability. Each of the senior partners has a strong combination of significant and relevant industry operating experience and venture capital investment experience from one or more of the Fund's targeted sectors. The New Leaf team is further strengthened by a group of experienced investment professionals who add highly relevant scientific backgrounds and investment experience.

The following timeline shows the history and progression of the New Leaf team:



SENIOR TEAM

Philippe Chambon, MD, Ph.D., (55), Managing Director, helped found New Leaf in 2005. Philippe joined Sprout in 1995 and since that time has been an active investor in all three sectors of interest for NLV-III. His investments have spanned all stages including six start ups and several later stage growth equity investments and one buy-out. Philippe is currently focused on New Leaf's Information Convergence sector and late stage biopharmaceutical investments. Philippe is currently on the boards of directors of Treato, Truveris, Karos Pharmaceuticals, Principia BioPharma and VaxInnate. He was previously on the boards of NxStage Medical (NASDAQ: NXTM), Auxilium (NASDAQ: AUXL), ePocrates (NASDAQ: EPOC, acquired by athenahealth), Nuvelo (NASDAQ: NUVO), Sapient Health Network (acquired by WebMD), Spotfire (acquired by Tibco Software), and Combichem (acquired by DuPont). He also led our investment in, and was a board observer at, Audax Health (acquired by UnitedHealth/Optum). Immediately prior to joining Sprout, Philippe was a Manager in the healthcare practice of the Boston Consulting Group. In that capacity, he managed strategy and business re-engineering assignments with clients in the pharmaceutical, biotech and insurance industry. Previously, Philippe was an executive with Sandoz Pharmaceutical for seven years, where he built and led an organization responsible for late stage clinical project management, portfolio management, and pre-marketing and pharmacoeconomics activities. He conducted graduate research in

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molecular immunology at The Pasteur Institute and earned an M.D. and Ph.D. from the University of Paris, and an M.B.A. from Columbia University.

Jeani Delagardelle, (57), Managing Director, helped found New Leaf in 2005. She joined Sprout in 2000. At New Leaf, Jeani leads the Medical Device investment effort. Jeani is currently on the boards of directors of Access Closure, Altura, Cardiokinetix, Direct Flow Medical, Intrinsic Therapeutics, ReShape Medical, and Spiracur. She was previously on the boards of directors of Interlace (NLV-I company acquired by Hologic), Epicor (acquired by St. Jude), Visiogen (acquired by Abbott), PercuSurge (acquired by Medtronic), and NxStage Medical (NASDAQ: NXTM). Prior to joining the healthcare investment team at Sprout, Jeani was a General Partner at Weiss, Peck & Greer Venture Partners ("WPGVP") where she focused on healthcare investments. Before joining the venture industry, Jeani spent 16 years in senior marketing and general management positions in both the medical device and pharmaceutical industries. She was Vice President of Global Marketing for Target Therapeutics, held several senior management positions within the Medi-tech division of Boston Scientific, and served as the Director of Business operations for Roche Pharmaceuticals. Jeani earned an A.B. in Clinical Psychology from Occidental College and an M.B.A. from the University of California at Irvine.

Ron Hunt, (49), Managing Director, joined Sprout in 1998 and helped found New Leaf in 2005. He has played significant role in the firm's investment activities in later stage biopharmaceuticals and has also contributed to the activities in each of the other sectors. Ron is currently on the boards of Durata Therapeutics (NASDAQ: DRTX), IlluminOss Medical, Relypsa (NASDAQ: RLYP), and SpineWave. Ron was previously on the boards of Cerexa (NLV-I company acquired by Forest Laboratories), Stromedix, Inc. (NLV-I company acquired by Biogen Idec), Aspreva Pharmaceuticals (NASDAQ: ASPV, acquired by Galenica, Inc.), Phase Forward (NASDAQ: PFWD, acquired by Oracle), and Pathology Partners (acquired by Caris Group). Before joining Sprout, he spent a combined 12 years in the pharmaceutical industry in operating roles and as a management consultant with The Healthcare Group (a division of the Interpublic Group of Companies) and Coopers & Lybrand Consulting. He gained eight years of operating experience in various commercial roles working for SmithKline Beecham and Johnson & Johnson. Ron earned a B.S. from Cornell University and an M.B.A. from The Wharton School of the University of Pennsylvania.

Vijay Lathi, (41), Managing Director, helped found New Leaf in 2005 and joined Sprout in 1998. Vijay's activities are focused primarily on information convergence, although historically he has been involved in investments across all sectors. He is currently on the boards of directors of AwarePoint, Oxford Immunotech (NASDAQ: OXFP), iRhythm Technologies, Kit Check, TigerText and XDx, while maintaining board observer status with Labcyte. Vijay was previously on the boards of Advanced Cell Diagnostics, Ilypsa (acquired by Amgen) and Relypsa (NASDAQ: RLYP). Prior to joining Sprout, Vijay spent one year as an analyst in the healthcare venture capital group at Robertson Stephens where he reviewed investments spanning medical devices, therapeutics and healthcare information technology. Prior to Robertson Stephens, Vijay spent approximately one and a half years as an analyst at Cornerstone Research, a business consulting firm focused on financial and econometric analysis. He earned an M.S. in Chemical Engineering from Stanford University and a B.S. in Chemical Engineering from MIT, with a focus on applications of engineering to the life sciences.

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James Niedel, MD, Ph.D., (70), Venture Partner, joined Sprout in May 2002 and helped found New Leaf in 2005. Jim will change his status to Venture Partner in NLV-III with the closing of the new fund. In this role, Jim will work full-time as a senior member of the NLV investment team working on new investments, and he will continue with full oversight and portfolio management responsibilities for NLV-I and NLV-II. Jim is currently on the boards of directors of Chimerix (NASDAQ: CMRX, former Chairman) and Tioga. He was previously on the boards of Intarcia Therapuetics (now currently a Board observer), Sirna Therapeutics (NASDAQ: RNAI, acquired by Merck in 2006 for $1.1 billion), where he served as Chairman; Oriel Therapeutics (acquired by Novartis in 2010), where he served as Executive Chairman, and Pearl Therapeutics (acquired by AstraZeneca in 2012). Prior to joining Sprout, Jim was Chief Science and Technology Officer for GlaxoSmithKline ("GSK"). From 1995 to 2001, he led Global Research and Development, Information Technology and Product Strategy and was a member of the board of directors of Glaxo Wellcome plc. From 1988 to 1995 Jim was Vice President, Research and Senior Vice-President R & D for the U.S. subsidiary of Glaxo. During his nearly 13 years with the Company, he oversaw the discovery, development and/or registration of over 20 products marketed by GSK, including those for: HIV, hepatitis B, asthma/COPD, migraine, BPH, irritable bowel syndrome, smoking cessation, depression, chemotherapy-induced nausea and vomiting, breast cancer, herpes and malaria. Prior to GSK, Jim was Professor of Medicine, Chief of the Division of Clinical Pharmacology and Principal Investigator on studies of mechanisms of cancer and inflammation at Duke Medical School, where he had completed an Internal Medicine residency and a Hematology-Medical Oncology fellowship. Jim received his M.D. and Ph.D. (Biochemistry) degrees from the University of Miami, was selected a Searle Scholar and is a Fellow of the Royal College of Physicians (London).

Liam Ratcliffe, MD, Ph.D., (50), Managing Director, joined New Leaf in September 2008 and concentrates on biopharmaceutical investing. He is currently on the boards of directors of Array BioPharma (NASDAQ: ARRY), Neuronetics, Karus Therapeutics, Afferent, Calchan and Convergence, the latter three investments resulting from spin-outs from Roche (Afferent) and GSK (Calchan & Convergence), respectively. Prior to joining New Leaf, Liam previously served as Senior Vice President and Development Head for Pfizer Neuroscience, as well as Worldwide Head of Clinical Research and Development. Additional positions during his 12 years at Pfizer included Vice President of Exploratory Development for the Mid West region, and Head of Experimental Medicine at Pfizer's Sandwich, UK Laboratories. As Head of Neurosciences, Liam was responsible for the development of several successful late-stage projects and marketed products, including Lyrica, Chantix and Geodon. In previous roles, he gained extensive experience in early drug development and translational research across multiple therapeutic areas, including inflammation, pain, cardiovascular disease, infectious diseases and genitor-urinary medicine. Liam began his career in the pharmaceutical industry in a medical marketing role at Roche in South Africa. He received his M.D. degree and Ph.D. degree in immunology from the University of Cape Town and his M.B.A. degree from the University of Michigan. Liam completed his internal medicine training and fellowship in Immunology at Groote Schuur Hospital and associated teaching hospitals in Cape Town, South Africa.

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OTHER INVESTMENT PROFESSIONALS

Kathy LaPorte, (52), Venture Partner, is an angel investor in the Digital Health space focusing on evaluating and mentoring start-ups developing digital technology solutions for healthcare consumers, providers, payers and the pharmaceutical/medical device industries. Kathy is affiliated with Health Tech Capital and is a Venture Partner with New Leaf, collaborating on sourcing of opportunities with an emphasis on the Information Convergence sector. Kathy was one of the founders of New Leaf upon its spin out from the Sprout Group in 2005. Kathy joined the Sprout Group in 1993 and became a General Partner in 1994. Between 1987 and 1993, she was a Principal at Asset Management Company, a venture capital firm focused on early stage investments. Kathy received an M.B.A. from Stanford University Graduate School of Business (Arjay Miller Scholar), and a B.S., summa cum laude, Phi Beta Kappa from Yale University.

Mark Charest, Ph.D., (36), Portfolio Manager, joined New Leaf in 2012. Previously, Mark was an Associate and Kauffman Fellow at Panorama Capital (2010-2012) focused on life sciences investments. Mark previously worked as a Consultant at ZS Associates (2009) and as an Associate at Great Point Partners (2007-2009), a healthcare-focused public and private equity investment firm. Prior to that, Mark held an operating role as a Medicinal Chemistry Lab Manager at Novartis Institutes for BioMedical Research (2004-2007). Mark received his Ph.D. in Chemistry and Chemical Biology from Harvard University as a National Science Foundation Graduate Research Fellow.

Mike Dybbs, Ph.D., (39), Principal, joined New Leaf in 2009 and was promoted to Principal in 2012. Mike is currently on the boards of directors of Advanced Cellular Diagnostics and Versartis. Prior to joining New Leaf, Mike was a Principal at the Boston Consulting Group (BCG) where he was a core member of their Health Care practice. Mike graduated magna cum laude from Harvard University with an AB in biochemical sciences and received his Ph.D. in molecular biology and genetics from UC Berkeley, where he was awarded a Howard Hughes Medical Institute fellowship. His research had been published in peer-reviewed journals, including Neuron, Science and Nature.

Eric Kim, (28), Associate, joined New Leaf in December 2013. From 2011 through 2013, Eric was a Private Equity Associate at Francisco Partners, where he focused on diligence and company oversight efforts on the firm's healthcare information technology portfolio. Prior to joining Francisco Partners, Eric worked for three years at McKinsey & Company as a Senior Business Analyst in their Corporate Finance Practice. Eric received his dual B.A. in Mathematical Methods in the Social Sciences and Economics from Northwestern University.

Isaac Manke, Ph.D., (37), Portfolio Manager, joined New Leaf in 2009 as an Associate and was promoted to Public Investment Director in 2012. Prior to joining New Leaf, Isaac was an Associate in the Global Biotechnology Equity Research group at Sanford C. Bernstein. Previously, Isaac worked as an Associate in the Biotechnology Equity Research group at Deutsche Bank and was a Senior Analyst at Health Advances, a biopharmaceutical and medical device strategy consulting firm. Isaac received a B.A. in Biology and a B.A. in Chemistry at Minnesota State University (Moorhead), and a Ph.D. in Biophysical Chemistry and Molecular Structure at the Massachusetts Institute of Technology (MIT). Isaac's discoveries led to several publications in top journals, including Science and Cell, and were selected by Science as one of

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the "2003: Signaling Breakthroughs of the Year". These discoveries also resulted in four issued patents.

FINANCE AND OPERATIONS

Craig L. Slutzkin, (39), is Chief Financial Officer and manages the back office, compliance and administrative functions for New Leaf. Craig joined Sprout as Vice President and the head of its back office operations in August 2002 and transitioned to New Leaf at the time of the spin-out. Prior to joining Sprout, he spent over seven years in the audit and assurance practices of Arthur Andersen and Ernst & Young in New York, attaining the position of Senior Manager. While at Andersen and Ernst & Young, clientele included various multi-strategy private equity and venture capital fund firms as well as top tier investment banks. Craig received his M.B.A. in finance from Columbia Business School and received a B.A. in Accounting and Information Systems from Queens College. He is a certified public accountant and a member of the American Institute of Certified Public Accountants.

INDUSTRY ADVISORS

The Fund Managers work closely with industry professionals who are experts in New Leaf's fields of interest and are willing to work closely with the Fund Managers on an as needed basis to provide their perspectives on topics and issues that are relevant to due diligence on new investments, on-going issues that arise in the management of existing portfolio companies, and longer term fund strategy. New Leaf's advisors are all prominent in their fields, and hold senior positions within leading corporations and academic institutions. These experts provide New Leaf and its portfolio companies with their own invaluable insights, but equally importantly open up their networks of contacts in ways that vastly expand and strengthen New Leaf's own network.

Therapeutics Advisors

New Leaf works with a broad range of industry advisors to support its investment activities in therapeutics. The Fund Managers work on an as needed basis with a large group of advisors that includes contacts from industry and academia that each of the investment professionals within the firm has cultivated through their own professional and academic experiences. The Fund Managers solicit input from advisors on an as needed basis to get valuable input on specific scientific, clinical, and commercial issues and topics relevant to diligence on new investment opportunities, and to the management of existing portfolio companies. This network gives New Leaf timely and valuable access to some of the world's leading academic scientists and experienced practitioners/executives from industry, and brings their subject matter expertise to bear across the myriad of topics that are critical to New Leaf's decision making in the therapeutics sectors. Because of the breadth of topics where this type of outside input is required, and due to the fact that the science and technology is evolving rapidly in most of these fields, New Leaf has not created a formal advisory board for therapeutics

Information Convergence Advisory Board

The Fund Managers have assembled an additional advisory board to support activities in Information Convergence. This group of advisors has a breadth of experience in the development and deployment of new information technologies that are reshaping healthcare.

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Their collective experience is from industry, including leading large and entrepreneurial corporations, as well as from the provider side, including senior administration of one of the world's most prominent and forward-thinking teaching hospitals. These professionals include the following:

John Halamka, M.D., is a physician and technology leader who focuses on electronic health records as well as secure sharing of healthcare data for care coordination, population health, and quality improvement. He is currently Chief Information Officer of Beth Israel Deaconess Medical Center and also a practicing Emergency Physician and Professor at Harvard Medical School. He is current Chairman of the New England Healthcare Exchange Network (NEHEN), co-chair of the national HIT Standards Committee, and co-Chair of the Massachusetts HIT Advisory Committee.

Lee Newcomer, M.D., Senior Vice President, UnitedHealthcare with strategic responsibility for Oncology, Genetics and Women's Health. Dr. Newcomer returned to UnitedHealthcare in 2006 to focus on combining clinical, financial and administrative incentives for improved and affordable cancer care. From 1991 to 2000, Dr. Newcomer was the chief medical officer at UnitedHealthcare. He is a board certified medical oncologist and former chairman of Park Nicollet Health Services and was previously a medical director for CIGNA Health Care of Kansas City. Dr. Newcomer was a founding executive of Vivius, a consumer directed venture that allowed consumers to create their own personalized health plans.

Stephen Oesterle, M.D., Senior Vice President for Medicine and Technology, Medtronic Inc. Dr. Oesterle is focused on the formation of technological strategies and continued development of relationships with the world's medical communities. He previously served as an Associate Professor of Medicine at the Harvard University Medical School and as Director of Invasive Cardiology Services at Massachusetts General Hospital.

Marcia Radosevich, Founder and CEO of HPR, a HCIT company that was sold to McKesson. Her prior experience was with Managed Health Care Services, The Travelers Insurance Companies, and Health Data Institute (a healthcare consulting firm).

Anand Shroff, Chief Technology and Product Officer and Co-Founder, Health Fidelity, Inc. Prior to joining Health Fidelity, Mr. Shroff was VP of HIE and EHR Products at Optum (a division of UnitedHealthcare). He came to Optum by way of acquisition of Axolotl Corporation, a leader in the health information exchange (HIE) space. Anand was also a founding member of the Oracle Healthcare team, and was responsible for Oracle's healthcare product portfolio that included healthcare analytics, clinical data management, and terminology mediation solutions.

David Watson, Vice President of Healthcare Product Strategy, Oracle. Previously he was the Chief Operating Officer of MedeAnalytics, and prior to that was Senior Vice President and Chief Technology Officer of Kaiser Permanente. Prior to Kaiser, Mr. Watson served in a variety of executive IT roles at Baxter Healthcare, Allergan, Northrup Grumman, and Mattel. He is a senior HCIT executive with 25 years of experience delivering client facing solutions in the broad areas of application development, infrastructure engineering, business consulting, strategy, architecture and operations.

David Whittlinger, Executive Director, New York eHealth Collaborative. Prior to working with NYeC, served as the Director of Healthcare Device Standards and Interoperability for the Intel Corporation in its Digital Health Group. Mr. Whitlinger was responsible for Intel's healthcare device interoperability strategies and standards development. He has also led a large, cross-industry consortium, the Continua Health Alliance, focused on the establishment of an ecosystem of interoperable, personal telehealth systems. Prior to establishing the Healthcare Device Standards Group, he worked on a wide variety of wireless standards within Intel.

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III. SUMMARY OF HISTORICAL INVESTMENT PERFORMANCE

The Fund Managers' long term track record in healthcare technology investing clearly establishes the team as one of the most successful in the venture capital industry over the last two decades. Over an 18 year period and across the portfolios of six distinct venture funds focused on healthcare technology investments, the Fund Managers have delivered net performance that has consistently outperformed venture industry benchmarks and relevant public equity market indices[15,16]. The Fund Managers' track record is notable for the following reasons:

- **Performance has been consistently top-quartile since the mid-1990s:** NLV-I, NLV-II and the healthcare technology portfolios in the Sprout Capital funds have invested over $1.6 billion in healthcare technology companies since 1995. Over this time, The Fund Managers' returns have consistently exceeded Cambridge Associates' top-quartile benchmarks for U.S. venture capital healthcare and/or U.S. total venture capital.[16]

- **Exceeded relevant public equity indices by substantial margins on all realized funds:** The Fund Managers invested $1.02 billion in the portfolios of healthcare technology investments in four Sprout Capital funds (Sprout Capital IX, L.P., Sprout Capital VIII, L.P., Sprout Capital VII, L.P. and Sprout Growth II, L.P.), and these are now fully realized (or near fully realized in the case of Sprout Capital IX). The net annual IRR's on these four funds outperformed the S&P 500 (568 – 2,259 bps), S&P Healthcare (302 – 2,066 bps), NASDAQ Composite (451 – 2,125 bps), and the Russell 3000 (502 – 2,215 bps) using the Public Market Equivalent Plus (PME+) methodology[17]. Although PME+ methodology is most informative when used to analyze funds whose returns are mature, the PME+ methodology shows that NLV-I is outperforming these same indices, and shows encouraging results for NLV-II despite its relative immaturity.

It is this consistently high level of return over an 18 year period, spanning several challenging investment cycles, that creates a truly unique track record within the venture capital sector.

INVESTMENT PERFORMANCE WITHIN INDIVIDUAL FUNDS

The New Leaf team has invested over $1.67 billion in 126 healthcare technology companies within 6 distinct funds since 1995. These funds included NLV-I and NLV-II and the healthcare technology investments in four Sprout Capital funds (Sprout Capital IX, L.P., Sprout Capital VIII, L.P., Sprout Capital VII, L.P., and Sprout Growth II, L.P., together the "***Sprout Funds***"). In aggregate, the team has exited or partially exited investments in 92 companies, generating gross realizations of over **$2.6 billion** and a gross realized cash-on-cash return and internal rate of return (IRR) of **2.1x** and **17%**, respectively. Corresponding net returns on the portfolios in each of these funds are provided in Appendix 2.

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[15] Please see Section XIII: "Appendices" and the endnotes in Appendix 4. Disclosure of past performance herein is for informational purposes only and is not indicative of future results.

[16] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" and endnote C (regarding information provided by Cambridge Associates) in Appendix 4.

[17] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices; Appendix 3" (regarding the PME+ methodology) and endnotes B, D E and F in Appendix 4.

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New Leaf Funds

NLV-I has capital commitments of $310 million, and the Fund Managers began investing in mid-2005. The fund completed its new investment period in early 2008 with a portfolio of 22 companies. NLV-I has fully realized 13 investments, and there are nine active investments in companies and contingent value rights (CVRs) from three of the realized investments remaining in the fund. NLV-I is a relatively young fund, with the majority of the cost basis still at work, and to date has generated a gross realized IRR of 23%, and a gross total IRR of 19%. NLV-I has a net total multiple of 1.76x and a net IRR of 12.1%. NLV-I has a distributed to paid-in-capital ratio of 0.51x, and the Fund Managers believe the fund has significant future returns potential from the remaining active investments in the portfolio as well as from potential payments from CVRs on three realized investments. NLV-I is in the top quartile of funds tracked by Cambridge Associates for U.S. healthcare venture capital in the 2005 vintage year.

NLV-II has capital commitments of $450 million, and the Fund Managers began investing in 2008. The fund will complete its new investment period by mid-2014. NLV-II currently has a portfolio consisting of 35 companies. NLV-II has realized or partially realized 13 investments, and there are 22 other active investments and a small public portfolio remaining in the fund. NLV-II is still an immature fund in terms of level of realizations, and to date has generated a gross realized IRR of 34%, and a gross total IRR of 30%. NLV-II has a net total multiple of 1.44x and a net IRR of 16.4%. NLV-II has a distributed to paid-in-capital ratio of 0.50x, and the Fund Managers believe the fund has significant future returns potential from the remaining active investments in the portfolio. The Fund Managers believe that NLV-II has unusually positive liquidity characteristics for a life sciences focused venture capital fund of its age, with just over 65% of the fund's current carrying value in the form of public securities (as of March 31, 2014). NLV-II's current performance places the fund in the top quartile of funds tracked by Cambridge Associates for U.S. venture capital in the 2008 vintage year.

Additionally, over the investment period of NLV-I, the net annual IRR is outperforming relevant public market indices when compared on a public market equivalent basis (PME+). NLV-II's net annual IRR shows encouraging results thus far for a relatively immature fund[18]. The range of outperformance for each of these portfolios versus the S&P 500, S&P Healthcare, NASDAQ Composite, and the Russell 3000 through March 31, 2014 is the following:

	Net IRR Outperformance vs. Public Indices (PME+ Methodology)			
	S&P 500	**S&P Healthcare**	**NASDAQ Composite**	**Russell 3000**
New Leaf Ventures I, L.P.	+496 bps	+201 bps	+181 bps	+446 bps
New Leaf Ventures II, L.P.	+275 bps	-187 bps	-21 bps	+218 bps

[18] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices; Appendix 3" and the endnotes thereto (regarding the PME+ methodology).

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Sprout Capital Healthcare Technology Portfolios:

Since 1995, members of the New Leaf team made all of the healthcare technology investments in the Sprout Funds while they were part of the investing team at the Sprout Group. The Sprout Funds were venture capital funds that were diversified across several sectors including information technology, communications, services, and healthcare technology. The healthcare technology investments in the four Sprout Funds included **$1.019 billion** in total cost, which was invested in new and follow-on investments in 69 companies from 1995 to 2013. The healthcare technology investments in the first three of these funds are now fully realized, and those in Sprout IX are nearly fully realized. To date, across these four funds, the New Leaf team has generated $1.997 billion of realizations in the aggregate (63 realized investments), and there is $68 million in unrealized value in six unrealized investments.

The net annual IRR performance on the healthcare technology portfolios in each of the Sprout Funds would place them in the top quartile of all healthcare venture capital funds tracked by Cambridge Associates in each of the vintage years for which they have established a benchmark[19]. Additionally, over an 18 year period the net annual IRR on these portfolios outperformed relevant public market indices when compared on a public market equivalent basis (PME+)[20]. The range of outperformance for each of these portfolios versus the S&P 500, S&P Healthcare, NASDAQ Composite, and the Russell 3000 through March 31, 2014 is the following:

	Net IRR Outperformance vs. Public Indices (PME+ Methodology)			
	S&P 500	**S&P Healthcare**	**NASDAQ Composite**	**Russell 3000**
Sprout Capital IX, L.P. *	+638 bps	+776 bps	+451 bps	+565 bps
Sprout Capital VIII, L.P. *	+587 bps	+441 bps	+725 bps	+502 bps
Sprout Capital VII, L.P. *	+568 bps	+302 bps	+554 bps	+554 bps
Sprout Growth II, L.P. *	+2,258 bps	+2,064 bps	+2,125 bps	+2,215 bps

*Healthcare Technology Portfolios

[19] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices" and the endnote C in Appendix 4 regarding information provided by Cambridge Associates.

[20] Please refer to Section III: "Summary of Historical Investment Performance" and Section XIII: "Appendices; Appendix 3" and the endnotes thereto (regarding the PME+ methodology).

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Current gross and net portfolio returns for the New Leaf funds and for the healthcare technology portfolios in the Sprout Funds are detailed in the following chart:

Chart 1: Returns by Fund

As of March 31, 2014

($ in millions)

Fund:	Growth II HCT	Sprout VII HCT	Sprout VIII HCT	Sprout IX HCT	NLV-I	NLV-II
Fund Size:	$15M Fund *	$95M Fund *	$147M Fund *	$690M Fund *	$310M Fund	$450M Fund
Paid-In Capital	$15M	$95M	$147M	$690M	$303M	$407M
Vintage Year:	(1993 - 2007)	(1995 - 2011)	(1998 - 2012)	(2000)	(2005)	(2008)
First Investment	1995	1995	1998	2000	2005	2008
Gross Fund Returns						
Total Multiple N	4.4x	2.6x	1.7x	2.0x	2.1x	1.8x
Realized Multiple N	4.4x	2.6x	1.7x	2.2x	1.7x	2.0x
Total IRR D	44%	19%	10%	15%	19%	30%
Realized IRR D	44%	19%	10%	17%	23%	33%
Net Fund Returns						
Net Total Multiple N	3.69x *	2.17x *	1.49x *	1.66x *	1.75x	1.45x
Net Total IRR D	28.9% *	12.0% *	6.0% *	9.3% *	12.0%	16.7%
Net Distributed / Paid-In Multiple F	**3.69x** *	**2.17x** *	**1.49x** *	**1.55x** *	**0.51x**	**0.50x**
Net Distributed $s to LPs	*$56.3*	*$207.0*	*$218.7*	*$1,071.5*	*$154.7*	*$204.2*
Interim Fund Liquidity Metrics						
(Distributed + Public) / Paid-In Multiple G	--	--	--	1.62x	0.74x	1.18x
(Distributed + Liquid Public) / Paid-In Multiple H	--	--	--	1.58x	0.57x	0.75x
IRR Outperformance Versus Public Indices						
PME+ (Basis Points over S&P 500 Healthcare Sector) **	+2,064 bps	+302 bps	+441 bps	+776 bps	+201 bps	-187 bps
PME+ (Basis Points over S&P 500) **	+2,258 bps	+568 bps	+587 bps	+638 bps	+496 bps	+275 bps
PME+ (Basis Points over Russell 3000) **	+2,215 bps	+554 bps	+502 bps	+565 bps	+446 bps	+218 bps
PME+ (Basis Points over Nasdaq Composite) **	+2,125 bps	+554 bps	+725 bps	+451 bps	+181 bps	-21 bps

NLV and Sprout fund data as of March 31, 2014. Sprout fund statistics computed based on healthcare portfolio within Sprout.
* See Appendix 2 and endnotes A and E in Appendix 4. Based on synthetic funds with assumptions around recycling and fee structure.
** Based on Public Market Equivalent (PME+) methodology. See Appendix 3 and endnotes A, B, E and G in Appendix 4.

Please Section XIII: "Appendices" for definitions of terms and/or methodology.

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INVESTMENT PERFORMANCE BY SECTOR

BIOPHARMACEUTICAL RETURNS SUMMARY:

The New Leaf team's biopharmaceutical investment performance has been strong in all funds. In aggregate, the New Leaf team has invested $945 million in 64 biopharmaceutical investments, and the historic realized biopharmaceutical results are **2.29x** gross realized cash-on-cash return ("***Multiple***") and a **21.4**% gross realized IRR. These realized returns have been driven by successful early and later stage investments. Table 1 summarizes the gross realized and unrealized returns from biopharmaceutical investments in each New Leaf fund and the Sprout Funds.

Table 1: Gross Biopharmaceutical Performance by Fund Group
$ amounts in millions, as of March 31, 2014

			Gross Value			Gross Multiple		Gross IRR	
	Deals	Total Cost	Total	Realized	Unrealized	Realized	Overall	Realized	Overall
New Leaf Ventures II, L.P. (2008)	20	$209.0	$508.5	$218.0	$290.4	2.59x	2.43x	67.5%	58.3%
New Leaf Ventures I, L.P. (2005)	14	$205.6	$501.6	$167.3	$334.4	1.68x	2.44x	22.8%	23.5%
All Sprout Funds (1993, 1995, 1998, 2000)	30	$533.5	$1,217.0	$1,163.9	$53.1	2.37x	2.28x	20.6%	20.0%
Total	**64**	**$948.2**	**$2,227.1**	**$1,549.2**	**$677.9**	**2.29x**	**2.35x**	**21.4%**	**21.6%**

Please see the endnotes in Appendix 4 for definitions of terms and/or methodology. Note that these gross returns are for portions of each fund, broken out by investment sector subfocus. Management fees, the general partner's carried interest and other expenses are applied on a fund level and not based on individual investments or a portion of the investment portfolio. For net returns on each fund which would include these items, please see Appendix 2.

INFORMATION CONVERGENCE RETURNS SUMMARY:

While New Leaf restarted new investment activity in information convergence opportunities in NLV-II, the Fund Managers already had an established track record in this sector from 9 investments in the Sprout Funds. In total, the Fund Managers have made 17 investments in this sector, for a combined total of $142 million of invested capital. The team has realized or partially realized nine investments for combined gross realizations of $262 million and a **2.62x** gross realized Multiple and **18.8**% gross realized IRR. Table 2 summarizes the gross realized and unrealized returns from information convergence investments in each New Leaf fund and the Sprout Funds:

Table 2: Gross Information Convergence Performance by Fund Group
$ amounts in millions, as of March 31, 2014

			Gross Value			Gross Multiple		Gross IRR	
	Deals	Total Cost	Total	Realized	Unrealized	Realized	Overall	Realized	Overall
New Leaf Ventures II, L.P. (2008)	8	$46.0	$59.0	$12.5	$46.5	3.44x	1.28x	95.5%	16.0%
New Leaf Ventures I, L.P. (2005)	0	$0.0	$0.0	$0.0	$0.0	N/A	N/A	N/A	N/A
All Sprout Funds (1993, 1995, 1998, 2000)	9	$96.2	$249.2	$249.2	$0.0	2.59x	2.59x	18.6%	18.6%
Total	**17**	**$142.1**	**$308.2**	**$261.7**	**$46.5**	**2.62x**	**2.17x**	**18.8%**	**18.5%**

Please see the endnotes in Appendix 4 for definitions of terms and/or methodology. Note that these gross returns are for portions of each fund, broken out by investment sector subfocus. Management fees, the general partner's carried interest and other expenses are applied on a fund level and not based on individual investments or a portion of the investment portfolio. For net returns on each fund which would include these items, please see Appendix 2.

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MEDICAL DEVICES RETURNS SUMMARY:

The Fund Managers have been an active investor in the medical device sector across the New Leaf and Sprout Funds. Combined, the Fund Managers have invested $371 million in 29 medical device companies, and have gross realizations of $394 million and a **1.82x** gross realized Multiple and **9.4%** gross realized IRR. Table 3 summarizes the gross realized and unrealized returns from medical device investments in each New Leaf fund and the Sprout Funds:

Table 3: Gross Medical Device Performance by Fund Group

$ amounts in millions, as of March 31, 2014

			Gross Value			Gross Multiple		Gross IRR	
	Deals	Total Cost	Total	Realized	Unrealized	Realized	Overall	Realized	Overall
New Leaf Ventures II, L.P. (2008)	5	$72.0	$52.5	$1.8	$50.6	0.11x	0.73x	N/A	-9.2%
New Leaf Ventures I, L.P. (2005)	6	$73.3	$146.4	$67.3	$79.2	5.64x	2.00x	58.8%	15.5%
All Sprout Funds (1993, 1995, 1998, 2000)	18	$225.2	$328.9	$325.1	$3.7	1.73x	1.46x	8.3%	6.1%
Total	**29**	**$370.5**	**$527.8**	**$394.2**	**$133.5**	**1.82x**	**1.42x**	**9.4%**	**6.6%**

Please see the endnotes in Appendix 4 for definitions of terms and/or methodology. Note that these gross returns are for portions of each fund, broken out by investment sector subfocus. Management fees, the general partner's carried interest and other expenses are applied on a fund level and not based on individual investments or a portion of the investment portfolio. For net returns on each fund which would include these items, please see Appendix 2.

TOOLS, DIAGNOSTICS, & INFRASTRUCTURE RETURNS SUMMARY:

The Fund Managers have made investments in the tools, diagnostics, and infrastructure sector across the New Leaf and Sprout Group funds. The strategy has included predominantly later/commercial stage tools and infrastructure investments and a mix of early/development stage and later/commercial stage diagnostics companies over time. Combined, the Fund Managers have invested in 17 companies, for a total $221 million in cost. The Fund Managers have generated gross realizations of $261 million, for a **1.50x** gross realized Multiple and **14.2%** gross realized IRR. Table 4 summarizes the gross realized and unrealized returns from tools, diagnostics, and infrastructure investments in each New Leaf fund and the Sprout Funds:

Table 4: Gross Tools, Diagnostics, & Infrastructure Performance by Fund Group

$ amounts in millions, as of March 31, 2014

			Gross Value			Gross Multiple		Gross IRR	
	Deals	Total Cost	Total	Realized	Unrealized	Realized	Overall	Realized	Overall
New Leaf Ventures II, L.P. (2008)	3	$31.0	$36.1	$0.0	$36.1	0.00x	1.16x	N/A	4.8%
New Leaf Ventures I, L.P. (2005)	2	$25.7	$1.7	$1.7	$0.0	0.06x	0.06x	N/A	N/A
All Sprout Funds (1993, 1995, 1998, 2000)	12	$164.0	$273.1	$258.8	$14.3	1.88x	1.67x	16.4%	13.9%
Total	**17**	**$220.7**	**$310.9**	**$260.5**	**$50.4**	**1.50x**	**1.41x**	**14.2%**	**11.9%**

Please see the endnotes in Appendix 4 for definitions of terms and/or methodology. Note that these gross returns are for portions of each fund, broken out by investment sector subfocus. Management fees, the general partner's carried interest and other expenses are applied on a fund level and not based on individual investments or a portion of the investment portfolio. For net returns on each fund which would include these items, please see Appendix 2.

For further detail on prior performance, please refer to the Appendices and endnotes hereto.

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IV. OPPORTUNITY IN THE HEALTHCARE SECTOR

The Fund Managers believe a number of macro market factors have aligned to create attractive and lasting conditions for NLV-III's targeted investment strategy in healthcare technology. Each of these market factors individually would have a direct positive impact on the level of risk and the potential for returns from investments in the healthcare technology sector. The fact that there are positive trends in all of them occurring simultaneously is unprecedented, and the Fund Managers expect that this will create a uniquely positive environment for NLV-III's investments in the healthcare technology sector. These macro market factors include the following:

STRONG GROWTH IN GLOBAL HEALTHCARE MARKETS

Healthcare is one of the largest and most dynamic segments of the global economy, and its growth is projected to continue the well-established historical trend of outpacing GDP growth in major economies for at least the next decade.[21] In the U.S., since 1970, health care spending per capita has grown at an average annual rate of 8.2% or 2.4 percentage points faster than nominal GDP. The persistence of this trend suggests systematic differences between health care and other economic sectors where growth rates are typically more in line with the overall economy. A smaller difference is projected over the 2011 to 2020 period, where the average annual growth in per capita health spending (5.3%) is projected to be about 140 basis points higher than the growth in GDP (3.9%)[22]. This powerful and sustained growth differentiates healthcare from many other large industrial and technology sectors, and it creates a positive backdrop for investment in certain areas within the sector.

The drivers of healthcare market growth vary between mature and emerging economies, but in both cases the shifts are resulting in significant increases in per capita health care consumption and predictable increases in spending to meet the rising demand. In developed economies, growth is being driven primarily by an aging population coupled with a continued willingness of payers to cover the costs for new therapeutics and interventions that meaningfully extend or improve the quality of patients' lives. In the U.S., which is representative of the demographic shifts in other major economies, the number of people over 65 is expected to double over the next three decades, reaching 70 million by 2030 or roughly 20% of the total U.S. population.[23] This aging demographic has a higher prevalence of disease and the cost of delivering care to treat the diseases of this older demographic is rising steadily. For example, in 2009, the per capita health care cost for a person 65 – 74 years old was approximately $14,000, but it was more than double that ($33,000) for those over 85. Before the end of this decade, the projected per capita annual cost to care for these same two groups is expected to rise to $22,000 (+57%) for 65 – 74 year olds and $55,000 (+67%) for those 85+[24].

Emerging markets such as Brazil, Russia, India and China (BRICs) are also contributing to the growth in health care spending globally, as these emerging markets mature and begin moving towards the standards of their counterparts in developed economies. The size of the middle

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[21] CMS, OECD, Eurostat

[22] Historical data from Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group

[23] U.S. Census Bureau

[24] Alvarez & Marsal healthcare, getting much closer to the cost precipice

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and upper classes in these countries is growing rapidly, and the spending power of these groups is becoming important to the global economy in many sectors. As the populations of these countries become more affluent, a greater proportion of their GDP is being spent on health care, and this is leading to rapid growth in many different healthcare product sectors in these countries. For example, China's prescription drug market, which is projected to be the world's second largest by 2020, is projected to grow to more than $110 billion by 2015 – up from $50 billion in 2010.[25] The medical device market in China is showing a similar growth pattern, with the current $17 billion medtech market (world's fourth largest) projected to more than double within the next five years.[26] This growth in emerging economies is expected to continue for the foreseeable future, and as it does, it will open vast new markets for established healthcare products companies in more developed countries, and will become increasingly important as a percentage of sales of global brands. At the same time, it will create opportunities for smaller, U.S. based companies to partner with large multinationals and domestic companies in the BRICs that have established distribution channels in these markets.

SIGNIFICANT OPPORTUNITY CREATED BY HEALTHCARE REFORM & RESTRUCTURING

As a result of the strong growth in healthcare expenditures, for at least the next decade, and likely much longer, the healthcare industry in the U.S. will be going through a period of significant reform and restructuring as the increasing healthcare costs place unsustainable fiscal burdens on government programs. After years of dire predictions and endless debate amongst elected officials, pundits, corporate leaders, and patient advocacy groups, there is recognition that long term healthcare liabilities are a critical issue and require broad reform to control their growth before they lead to irreparable fiscal harm. While much of the attention in these initiatives is focused on identifying opportunities to cut costs, the silver lining in them for investors is that their objectives also seek to improve the quality of healthcare and to substantially broaden the population that has access to healthcare services covered by third party payment.

In the U.S., the Federal Government has laid the foundations for restructuring the healthcare system through two key pieces of legislation. First, the HITECH Act provides large government subsidies for the adoption of IT tools by healthcare providers. The Federal Government has recognized that a fundamental underpinning of healthcare reform is a massive upgrade of the information technology infrastructure at all levels of the industry, and through this legislation has earmarked $26 billion dollars in direct subsidies to catalyze investment in this area.

The second key piece of legislation is the ACA, which is being implemented as a first step in the overhaul of the U.S. healthcare system. The ACA was signed into law in the U.S. in 2010 and begins its implementation phase in 2014. It is a complex piece of legislation that is designed to reform and overhaul many aspects of the U.S. healthcare system. The goals of the ACA are to increase the affordability and rate of health insurance coverage for all Americans, and to control the runaway growth in costs of health care faced by government, employers, and individuals. The ACA mandates a number of broad reaching mechanisms to achieve these goals, and

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[25] Reuters

[26] InVivo (Elseveir), June 2013

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introduces a range of new incentives/penalties that force market participants to address major cost, efficiency, and quality issues within the healthcare system.

The ACA and other healthcare reform initiatives are challenged by dual and somewhat conflicting objectives. They are focused on reducing costs and slowing growth rates in spending, but at the same time expand the size of the population that has access to healthcare covered by third party payment mechanisms. In order to cover the increased costs of the expanded coverage, reform initiatives attempt to radically improve the efficiency of healthcare delivery as a way of freeing up resources that can be redirected to providing care to populations that had previously not been covered. Some of the lowest hanging fruit that is being targeted in early reform initiatives is eliminating waste from the healthcare system. There are enormous resources that can be freed up by eliminating expenditures that are unnecessary or duplicative. In the U.S. healthcare system alone, there is an estimated $765 billion that is wasted annually. More than half of that total ($415 billion) is the result of fraud, unnecessary services, and inefficiently or mistakenly delivered care. Another 25%+ of the total ($190 billion) is the result of excess administrative costs (e.g., inefficiencies associated with paperwork and documentation)[27]. Finding ways to reduce waste in the system offers the opportunity to create significant value, but requires the adoption of entirely new tools and technologies by payers, providers, and patients. Developing these tools, applications, and systems is an area of significant opportunity for innovative technology focused companies.

A major part of eliminating waste in healthcare will be accomplished by driving efficiency and deriving maximum benefit from the enormous levels of current expenditures. Achieving this goal will have to include a fundamental change in focus to the principles of value-based medicine across all levels of the healthcare system. This is a radical change in objectives that is already happening, and it is leading to entirely new reimbursement models built around paying for technologies and treatments that provide care efficiently and at a cost proportional to the health benefit they deliver. Value-based medicine focuses on outcomes from healthcare services, which more closely aligns the interests of the payers with the healthcare providers and product companies whose services and products are the major cost elements in the delivery of healthcare. Although simple conceptually, this is a fundamental change in how healthcare is paid for from the historical reimbursement models that have focused on fixed payments for delivery of discrete procedures, with no corresponding emphasis on quality of the care delivered or on the resulting patient outcomes.

Refocusing treatment objectives within the healthcare system towards high quality outcomes over numbers of procedures will require many healthcare companies to reengineer aspects of their business models, but it will also provide them with new opportunity. In a system that rewards outcomes, companies and organizations that run with the highest quality and most efficiently will have significant opportunity to expand their own returns by taking on risk in the treatment of patients. Opening the market to this dynamic, where there is opportunity to earn a return on cost-effective, high quality patient management and outcomes, will stimulate the development and adoption of an entirely new set of enabling technologies and business models, which represent opportunity for innovative, technology-based, development and growth stage companies.

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[27] National Academy of Sciences, "Best Care at Lower Cost: The Path to Continuously Learning Health Care in America"

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There is no question that the shift to value-based reimbursement models will have a major impact on the economics of healthcare. Payers will be looking for ways to significantly reduce costs in all areas where a range of viable lower cost solutions are available, and will force providers to use those wherever possible through increasingly restrictive reimbursement policies. As an example, one area where this type of change has been implemented successfully for years is in the increased use of generic drugs, where payers no longer offer unrestricted reimbursement for the use of high cost, premium priced branded biopharmaceutical products that deliver only minor benefits in terms of convenience, or slight improvements in efficacy to small percentages of patients. This type of value-based review is now going on in all areas within healthcare, and is resulting in changes that are having a major impact on what services and products are selected, and who bears what percentage of the cost of that selection.

At the same time that payers and other 'at-risk' organizations are looking for any and all opportunities to move to lower cost alternatives, they are also continuing to invest in the adoption of innovative new therapeutics which can both improve outcomes and deliver quantifiable value, even when considering their additional costs and premium pricing. The products that receive this type of support from payers are ones that are focused on addressing truly unmet medical needs and deliver significant efficacy or safety benefits to patients, when compared to existing standards of care. They are also usually based on new technologies that enable novel approaches to the treatment of diseases and disorders. There are vast areas in medicine where large unmet medical needs exist and where scientific and technological progress is enabling entirely new approaches to addressing these. Where these intersect are areas of great opportunity for experienced investors.

RAPID ACCELERATION IN INNOVATION IN TARGETED SECTORS

Biopharmaceuticals:
Decades of government and industry investment in the study of the biological and genetic basis of disease is translating into a steady stream of new products with improved efficacy and decreased toxicity, and these are transforming how many high-morbidity diseases can be treated. Through this growing body of work, a much deeper understanding of the biochemical pathways underlying complex diseases is emerging, which is leading to identification of many new molecular targets for drug therapy. This targeted approach to pharmaceutical R&D is a fundamental change from the historical process that relied on large-scale, random screening of drug candidates for activity. A whole new generation of products targeting diseases at the molecular level is emerging and these offer much higher levels of efficacy and improved safety to specific groups of patients whose disease is well characterized by biomarkers that are tightly linked to the mechanisms of the underlying disease. This more targeted approach to discovery and development offers important benefits to all constituents, which ultimately improves the investment environment in biopharmaceuticals.

Oncology (i.e., cancer) is one therapeutic area where some of the most significant progress has been made recently. Targeted therapies in certain indications in oncology now provide for more effective treatments with fewer side effects than one-size-fits-all chemotherapy drugs. For example, new therapies have recently been developed that target specific subsets of malignancy through molecular targets including EGFR, HER2, and BRAF that have led to dramatic improvement in the treatment of certain cancers (e.g., lung, pancreatic, colon, breast, melanoma, and several hematologic cancers). It is expected that the next wave of advances will transform

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these diseases further from what has historically been a death sentence into a chronic, treatable condition. As this happens, huge markets will be created for entirely new biopharmaceutical products. While cancer is the leading disease area, this pace of dramatic scientific and technological progress is extending into several other areas of medicine and will likely accelerate. Many of the initial examples of targeted or personalized therapies in non-cancer indications have been in rare or so called "orphan" diseases following discovery of the underlying genetic abnormalities. This period of rapid technology advancement establishes a cycle of innovation in the market that creates great opportunity for highly focused, small, companies.

Information Convergence:
The rate of innovation in information convergence has already accelerated relative to the historical rate of innovation in healthcare information technology ("HCIT") due to several underlying factors. First, as mentioned, the HITECH Act provided billions in direct incentives to encourage healthcare providers to adopt information technology, beginning with electronic medical record ("EMR") systems. This led to a significant increase in spending on EMRs which benefitted large established EMR vendors, but it also benefitted new smaller players in the EMR market. Importantly, the broad upgrade of information technology and deployment of EMRs across the healthcare provider market has established a technology infrastructure in the market that benefits an entirely new generation of companies that are developing technologies that layer onto existing EMRs and address the next levels of IT adoption. This next level of information technology adoption is dictated by the HITECH Act through a series of "meaningful use" incentive initiatives.

Another key factor that has led to an acceleration in innovation in information convergence is that most of the highest value innovation in this sector is arising from integrating technologies that have been discovered, developed, validated, and implemented in completely different sectors (e.g., cloud storage, mobile computing, wireless communications, web-delivered software, diagnostics and sensors). These product development efforts draw heavily from existing technologies and allow small companies focused on addressing discrete problems and opportunities within the healthcare market to develop and launch products with minimal technology discovery. The bulk of the effort in these activities is in rapidly creating high value products by combining well-understood and available technologies, and getting them into the hands of customers to evaluate their performance in real world use conditions. This early customer experience allows companies to generate revenues early in their life, but also provides valuable user feedback which can be used to continuously improve product design elements. The benefit of this type of product development effort in the information convergence sector is that it reduces risk, lowers capital requirements, and results in more predictable timelines.

Considering the size of the opportunity and the large number of discrete problems and inefficiencies that must be addressed, the Fund Managers expect the next decade will be a period of robust innovation and company creation. Smaller companies are likely to thrive during this period as they are better able to quickly move from opportunity to product launch.

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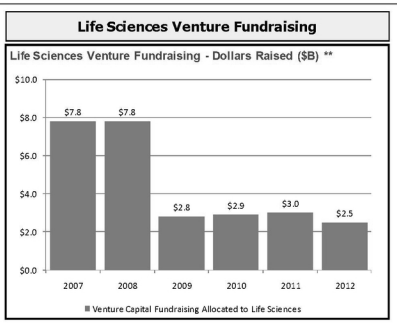
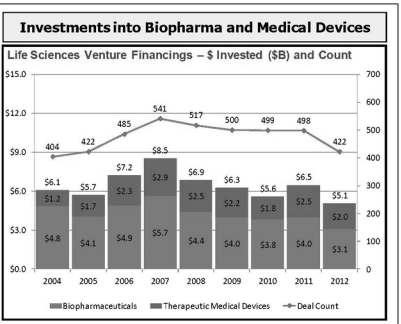
CONTRACTION IN HEALTHCARE VENTURE CAPITAL INDUSTRY & CAPITAL MARKET DYNAMICS MORE BROADLY CREATE OPPORTUNITY IN DEVELOPMENT STAGE AND EARLY COMMERCIAL STAGE COMPANIES

For the last several decades the healthcare venture capital industry has been the predominant source of early and growth stage funding for smaller, technology focused companies while they pursue product development, regulatory approval, and early commercialization. Over the last several years, there has been a significant contraction in the size of the healthcare venture capital industry in terms of amount of capital available to fund new companies, and the number of active firms investing in new companies. This contraction creates significant opportunity for those funds that remain active, as fewer firms and less capital is translating into less competition for deals. The Fund Managers have benefited from the reduced level of competition during the new investment period for NLV–II, and they believe these conditions will remain in place for at least part of the new investment period of NLV-III. It is too soon to know for sure, but it is likely the industry may have already reached the bottom of this cycle of contraction and could see a re-set that begins to shift the industry to more normalized conditions due to the recent stronger IPO and M&A markets.





Source: Venture investments data from VentureSource (U.S. only). Includes therapeutic medical devices only.
** "Life Sciences Venture Fundraising data from Dow Jones; Fenwick & West Analysis in 2012 Trends in Terms of Life Science Venture Financings

The market for IPOs was strong during 2013 and the first quarter of 2014 for companies with compelling stories based on differentiated technology, targeting important unmet medical needs, large market opportunities, and experienced management teams. Although the number of IPOs in the healthcare technology sector increased significantly, most of that activity was driven by offerings for biopharmaceuticals companies. The significant increase in IPO activity was driven by a number of factors, but one that had an important impact is the Jumpstart Our Business Startups Act (JOBS Act). This legislation was signed into law in the U.S. in April, 2012 and it changed the regulations governing how certain private companies can interact with investors in advance of an IPO. Under the new regulations, emerging growth companies can file their IPO draft registration statement privately with the SEC, and continue to meet with interested investors over several weeks or months to explain clearly their company strategy and technology in "testing the waters" meetings. The Fund Managers believe these new regulations are especially helpful to private biopharmaceutical companies, as they allow interested

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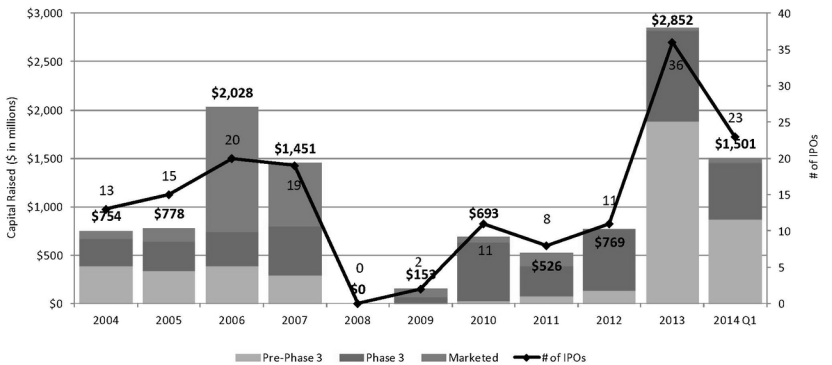
investors to grasp the complexities and opportunities of the small biotech companies before the formal filing of their IPO registration statements, and the start of the traditional IPO road show. The Fund Managers believe the JOBS Act and the use of "testing the waters meetings" has been one of the factors that helped open the current biotech IPO window, expanded the base of investors (public market specialist and generalist investors) participating in the recent offerings, and helped drive the after-market performance of many of these offerings.

Biopharma IPO Trends

($ in millions)



The combination of all of these positive factors has significantly strengthened the position of smaller development and early commercial stage healthcare technology companies, and creates a unique period of opportunity for investors in the sector.

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V. NEW LEAF VENTURE PARTNERS INVESTMENT STRATEGY

New Leaf's investment strategy is differentiated in the venture capital industry in terms of its sector focus, specific approaches within each sector, and the depth of experience and long-term track record that supports each element of the strategy. NLV-III will be invested in a diversified portfolio across four sectors: a primary focus on **Biopharmaceuticals** and **Information Convergence**, and a secondary focus on **Medical Devices** and **Biological Research Tools & Infrastructure**. The Fund Managers believe that these are the sectors within the healthcare technology industry where, with a targeted and specific sector strategy, there is the potential to generate attractive returns within a time frame consistent with the goals of investors in a venture capital fund. Importantly, the drivers behind the opportunity for value creation, major risk factors, capital requirements, timelines, and universe of potential acquirers in each of these sectors are distinct, and thus a portfolio constructed with investments with a combination of these will benefit from this diversification.

The Fund Managers will invest the Fund in a diversified portfolio composed of an estimated 24 - 28 companies that will be predominantly domiciled in the U.S., but could include a small number of companies based in Western Europe or Canada. The Fund Managers intend to serve on the boards of directors for the majority of the companies in the portfolio and will generally seek to establish ownership positions in companies that are large enough to allow them to exert considerable influence on the company's strategies, budgets, financing plans, operating objectives, management team composition, and paths to exit.

Consistent with past transitions between funds, the Fund Managers have evolved the investment strategy for NLV-III to reflect the team's view of where the most attractive opportunities will exist during the life of the Fund. The investment strategy for NLV-III will be distinct from other recent funds in terms of the specific weightings that will be placed on the targeted sectors, and certain considerations for company selection within those sectors.

BIOPHARMACEUTICALS INVESTMENT STRATEGY

As in all previous funds, biopharmaceutical investments will be the core focus for NLV-III and will comprise approximately 50% - 60% of the Fund. The Fund's biopharmaceutical investments will be mostly in development stage and commercial stage private companies, and will also likely include some investments in small capitalization public companies through structured transactions. The Fund Managers intend to construct a well-diversified portfolio of biopharmaceutical investments that includes a balanced mix of companies with earlier stage and later stage development programs and product platform technologies. Regardless of stage, by focusing on biopharmaceutical investments ahead of key risk inflection points, the Fund Managers expect to fund companies through the periods of greatest value creation to points where they will either become attractive targets for acquisition or partnership, or become of high interest to public market investors. In some cases, private companies whose underlying assets mature to these stages will become viable candidates for initial public offerings (IPOs) or mergers into public companies.

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Focus: Private and public companies with novel product programs & product platforms
Investments in the biopharmaceutical sector within NLV-III will target companies that are developing products that address clinically important unmet medical needs with competitively differentiated technologies. The Fund will invest across all stages, usually in companies that fit one of two different profiles. The first is companies with clearly differentiated, clinical stage **proprietary product programs** focused on significant market opportunities, where value can be built around a product(s) by financing it through one or more stages of clinical development, and in some cases to regulatory approval and commercialization. The second are companies with **novel product platforms** that are at or near the clinical stage with a lead product(s). These companies build value around both the product(s) itself as it advances through clinical development and around the product platform as its utility as a product creation engine is validated through the progress of the lead product(s).

The Fund Managers expect to identify investment opportunities within private or public companies whose primary asset(s) fall within one of the following categories:

- Early and mid-clinical stage product programs targeting a well validated mechanism of action in a disease with significant unmet medical need. The therapeutic areas and specific mechanisms of action will be known to be of high strategic interest to a number of larger biopharmaceutical companies. The target product profiles of the therapeutic product(s) for these assets will have clear points of competitive differentiation around efficacy and/or safety versus available therapeutics (and known clinical stage programs), and the clinical development programs behind them will be designed to provide clear data in support of these. Examples of these types of biopharmaceutical investments in the NLV portfolio are **Array Biopharma** (NLV-II, NASDAQ: ARRY, oncology, exited at 2.25x), **Chimerix** (NLV-II, private initially, now public on NASDAQ: CMRX, novel anti-viral therapy), and **Versartis** (NLV-II, private, novel, long-acting human growth hormone).

- Novel product platforms that offer the potential to target known, and well understood pharmacologic mechanisms of action in entirely new ways, or a product platform that has the potential to open up a field of entirely new pharmacologic mechanisms in diseases with large unmet medical need and rapidly advancing understanding of the underlying biology (e.g., hematologic and solid tumors). These platforms will be supported by validating data that provide strong support for the underlying biological hypotheses, and the companies will be at or approaching the clinical stage with an owned or partnered lead product program. The product platforms will usually have strong evidence of strategic interest from large or mid-sized biopharmaceutical companies through one or more partnerships that have generated non-dilutive capital for the company. Examples of three novel product platform companies in the NLV portfolio are **Pearl Therapeutics** (NLV-I, private, pulmonology, exited at 2.5x plus milestones), **Epizyme** (NLV-II, NASDAQ: EPZM, oncology, exited at 2.0x), and **Principia** (NLV-II, private, immunology & oncology).

- Later development stage and commercial stage, biopharmaceutical investments, where the investment theses will be to create value by funding companies through Phase 3 clinical trials, regulatory approval, and into early commercialization. In some cases, the

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Fund will seek to fund companies much later into commercialization to the point of sustainable profitability. These investments will be into private or small capitalization public companies in situations where the Fund Managers believe that the key risk inflection and the period of greatest value creation will be around regulatory approval and demonstration of commercial attractiveness of the product. These investments will focus on products where the level of clinical and regulatory risk is relatively low, and where commercial penetration can be driven by smaller, highly targeted sales and marketing activities. Biopharmaceutical companies at this stage have historically been attractive acquisition targets, and have consistently demonstrated that they can access public markets through IPOs in a broad range of market conditions. Examples of this type of later stage investment in the New Leaf portfolio include **Acadia Pharmaceuticals** (NLV-II, NASDAQ: ACAD, exited at 2.5x), Phase III, focused on psychosis associated with neurodegenerative diseases, **Durata Therapeutics** (NLV-II, private initially, now public on NASDAQ: DRTX), Phase III, focused on a late stage antibiotic development program spun out of Pfizer, and **InterCept Pharmaceuticals** (NLV-II, NASDAQ: ICPT, exited at 3.2x), Phase III, focused on an orphan indication in liver disease.

- Investments in public companies at any stage, whose primary assets are product programs or product platforms. Most of these investments will be focused on small capitalization companies at the clinical or early commercialization stage. New Leaf's focus on investment opportunities in small capitalization public biotech companies leverage the broad investment capabilities within the firm and benefit from the focused efforts of a small team of investment professionals dedicated exclusively to public market activities. As a result of this integrated approach, investments in public companies often target companies the Fund Managers have tracked over a number of years, some from the time when they were private companies. The dedicated public market team proactively tracks and screens the aggregate universe of biotech companies, with the goal of identifying compelling risk/reward investment opportunities. The primary focus of the screening efforts is to identify high-quality companies with attractive valuations that require financing to fund the company through key development milestones. The Fund will generally look to source or augment transformative, structured transactions in public companies, where a New Leaf partner will have the opportunity to join the board of directors. An example of an investment that resulted from New Leaf's focus on public market opportunities includes **MEI Pharma** (NLV-II, NASDAQ: MEIP), an investment the Fund Managers made to recapitalize the company after it had acquired a lead asset, Pracinostat, and needed capital to advance the program through clinical development. Pracinostat was an asset that was well known to New Leaf, as members of the team had followed it closely for several years while it was owned by a private company (S*Bio), and had made attempts to acquire and spin out the asset in the past. In addition to sourcing opportunities, the public market team assists the broader biopharmaceutical investment efforts by managing the sale and exit of New Leaf's larger positions in public securities, and by providing real-time insight into evolving market sentiment to the biotechnology and broader healthcare technology sectors that helps guide decisions around new investments and exit decisions.

For a complete list of investments made by the Fund Managers in healthcare technology companies see Appendices 1 and 4 .

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Leadership: NLV are leaders in biopharmaceutical investing across all stages and transaction types

The New Leaf team is well positioned to continue to play a leadership role in the sector. Over the last two decades, the Fund Managers have demonstrated an ability to access high quality biopharmaceutical investments at all stages, by sourcing opportunities through a range of activities that result in differentiated and in many cases proprietary deal flow. Deal flow is generated by relying on New Leaf's extensive network of relationships that span senior executives in the pharmaceutical and biotech companies, top scientists at world-class academic institutions, and leading investors in the venture capital, private equity, and small cap public sectors. By leveraging this network the Fund Managers gain visibility to interesting investment ideas, and develop insight into the long term strategic interests of the larger pharmaceutical and biotech companies and the evolving attitudes about value and risk of public market investors. Through this continuous process the Fund Managers seek to ensure that they are able to view the widest range of high quality opportunities and have a highly informed and discerning screen to determine which of the opportunities have the greatest long term investment potential. It is these efforts that have allowed the New Leaf team to create some of the best performing portfolios of biopharmaceutical investments in the industry in the Sprout Funds and in NLV-I and NLV-II, and has resulted in successful and consistent track records of returns in the sector. The Fund Managers have demonstrated leadership in the sector over the long term through transactions that span the full range of stages and transaction types, including:

- **Start-Ups**: The Fund Managers have played important roles and have been founding investors in a number of successful start-up companies. These have included **Pearl Therapeutics** (NLV-I, exited in sale to Astra Zeneca, 2.5x multiple plus milestones), **Relypsa** (NLV-I, private initially, now public on NASDAQ: RLYP), **Convergence/Calchan Pharmaceuticals** (NLV-II, one start up that subsequently split to become 2 separate companies), **Durata Therapeutics** (NLV-II: IPO – July, 2012, NASDAQ: DRTX), and **Ilypsa** (Sprout IX, exited in sale to Amgen, 6.9x multiple).

- **Established Private Companies**: The New Leaf Team has played the role of lead investor in a large number of private investments. These have included **Cerexa** (NLV-I, exited in sale to Forest Labs, 5.4x multiple), **Stromedix** (NLV-I, exited in sale to Biogen Idec, 1.8x multiple plus milestones), **Chimerix** (NLV-II, IPO – April, 2013, NASDAQ: CMRX), and **Auxilium** (Sprout IX, NASDAQ: AUXL, exited at 4.6x).

- **Restructuring Private Companies**: The Fund Managers have led financings that have restructured private companies, providing capital to fund business plans that have refocused company's business plans on certain key assets and product development programs and significantly reducing or terminating investments into others. Examples of this type of investment include **Intarcia Therapeutics** (NLV-I) and **Synageva Biopharma** (NLV-II, reverse merger to become public – November, 2011, NASDAQ: GEVA; exited at 7.3x).

- **Restructuring & Recapitalizing Public Companies**: The New Leaf team has created interesting investment opportunities through restructuring and recapitalizing public companies. Examples include **MEI Pharma** (NLV-II, NASDAQ: MEIP) and **Sirna**

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Therapeutics (Sprout IX, formerly NASDAQ: RNAI, exited through sale to Merck, 8.1x multiple).

- **Structured Investments in Public Companies**: The Fund Managers have led and participated in a number of structured investments into small cap public companies. These have included **Array Pharmaceuticals** (NLV-II, NASDAQ: ARRY; led a structured follow-on investment, NLV team member joined the board, exited at 2.25x), **Acadia Pharmaceuticals** (NLV-II, NASDAQ: ACAD, exited at 2.5x) and **Intercept Pharmaceuticals** (NLV-II, NASDAQ: ICPT; anchored company's IPO, NLV team member initially joined the company's board, exited at 3.2x).

For a complete list of investments made by the Fund Managers in healthcare technology companies see Appendix 1.

Favorable conditions for biopharmaceutical investments for NLV-III

The Fund Managers believe that NLV-III will be invested in a market with attractive conditions for investment in the biopharmaceutical sector. As a result, the Fund should have the opportunity to invest in compelling biopharmaceutical opportunities that have attractive risk-return profiles. A number of factors support this positive view of the investment thesis in the biopharmaceuticals sector.

First, the Fund will invest in a portfolio of biopharmaceutical companies with an emphasis on those that are developing targeted therapeutic opportunities that address mechanisms of disease at the molecular level with high specificity and offer meaningful efficacy and safety benefits to specific sub-groups of patients. Where possible, the Fund will look to invest in companies with product programs that are guided by validated biomarkers that can enable highly specific patient selection and provide an objective measurement of drug effect. The Fund Managers believe that opportunities with these characteristics offer important benefits to all market participants in the biopharmaceuticals sector, and that these substantially de-risk the R&D and commercial sides of the biopharmaceutical business model in ways that can meaningfully benefit investors.

Patients are offered therapies that are more targeted to their disease, and benefit from improvements in efficacy and safety through increased life expectancy, improved quality of life, and a more rapid return to a fully productive life;

Physicians have access to an arsenal of products that they can choose from to tailor therapy to specific patients' disease, and avoid the costs and risks associated with using less effective therapies that carry all the safety risks, but may or may not have any effect on the specific disease subtype of an individual patient;

Payers may pay higher prices for these therapies, but with the enhanced efficacy and safety profile that's possible with biomarker based targeting, they can expect to see better overall patient outcomes, that ultimately save money within the system;

Pharmaceutical Companies benefit because with targeted approaches to drug discovery and development, the probabilities of success improve, interactions with regulators become less risky, timelines to move products from the lab to the market can be significantly shortened, and

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sales and marketing becomes more efficient as commercial campaigns only need to target those physicians seeing specific subsets of patients;

Regulatory Authorities evaluate the risk-benefit of new therapeutics on specific subgroups of patients that are known to be suffering from a specific sub-type of diseases, and can thus require fewer patients and shorter timelines in clinical programs, ultimately lowering the risks and costs of the approval pathway for developers of new therapeutics; and

Investors can expect to see improving returns as the risk/reward equation of drug development is shifted significantly as a result of shortened timelines, smaller clinical trials, improved probabilities of success, and reduced risks at the clinical, regulatory, and commercial levels.

Second, the biopharmaceuticals sector is an improving regulatory environment in the U.S., helping set the stage for a positive investment cycle. There is strong evidence that over the last decade the FDA has been working to improve the drug approval process in the U.S. in tangible ways that benefit biopharmaceutical companies and reduce the risk for their investors. Although the path to regulatory approval for product programs has not been made easy by any standard, the FDA has made strides in making the process more predictable and streamlined. Some of the most significant improvements have been in therapeutic areas where there is a high level of unmet medical need. For example, the U.S. Food and Drug Administration ("FDA") is demonstrating clear interest in working more constructively with industry to bring new safe and effective therapeutics to market that target diseases that have potentially large cost burdens on the healthcare system (e.g., oncology). Additionally, the FDA has also improved the way that they communicate and interact with sponsors of new products, by creating set administrative procedures and timelines that they are required to meet through legislation like the Prescription Drug User Fee Act ("PDUFA") and the FDA Modernization Act. The FDA has implemented other initiatives that attempt to clarify requirements and shorten regulatory timelines for certain types of therapeutic products that they view as highest priority. These initiatives include programs to grant special designations, including Breakthrough Therapy, Accelerated Approval, and Priority Review, which can cut significant time out of the standard approval process. The impact of these and other programs has become apparent in the number of new drug approvals ("NDAs") by FDA in both 2011 (30 NDAs) and 2012 (39 NDAs), which trended higher compared to the previous six years and versus historic averages.[28] Overall, these initiatives and others, both in the U.S. and in other markets (e.g., E.U. and Japan), have made the regulatory environment more favorable for investors in the biopharmaceutical sector, and have reduced some of the uncertainty in a critical part of drug development.

A third factor supporting the positive investment thesis in biopharmaceuticals is the interplay of favorable conditions in the capital markets and the strategic needs of the large and mid-sized companies in the sector. These dynamics should create a positive financing and exit environment for biopharmaceutical companies for the foreseeable future, and the Fund Manager expect them to contribute to improving venture returns. The aforementioned contraction in the number of active firms and capital flows into healthcare technology venture funds has significantly reduced the level of competition between firms. At the same time, large and mid-sized biopharmaceutical companies have become increasingly dependent on

[28] Food and Drug Administration. Center For Drug Evaluation and Research

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development stage companies as an important source of innovation and new products to supplement R&D pipelines and drive future growth. Strong growth potential is critical for these companies to support their valuation metrics, especially in light of expected patent expirations on their commercial products. In total, over $290 billion of revenue is at risk from patent expirations between now and 2018.[29] The large and mid-sized companies are addressing this strategic need to a large extent through increased acquisitions and partnerships with development stage companies that have maturing assets. The Fund Managers expect this dynamic to increase competition between the larger strategic players in the industry as they vie for the most interesting companies with maturing development stage assets. The development stage companies should have strong negotiating leverage in these deal discussions, which should drive premium valuations on acquisitions and attractive terms on partnerships.

The increased strategic need for acquisitions and partnerships comes at a time when the large and many of the mid-sized companies in the industry are in a strong financial position to complete high value deals. The top ten pharmaceutical companies have a total of $140 billion in cash on their balance sheets today and have a combined market capitalization of over $1.3 trillion.[30] A relatively new set of well funded potential acquirers and/or partners has emerged over the last decade, as many of the mid-sized biotech companies have seen their commercial businesses thrive, and now have strong revenue and profit growth. Since 2002, the number of public biotech companies with annual profit (EBIT) over $100 million has doubled to 16, and the combined annual profit of these companies has increased 4.5 times to $16.6 billion.[31] This has significantly increased the number of companies in the industry with the financial wherewithal to complete large cash transactions. At the same time, the industry's R&D productivity has been disappointing in terms of new products generated by massive internal R&D budgets. To address the gaps created in their R&D pipelines, most large and mid-sized players have shifted a large percentage of their R&D budgets away from internal R&D projects and have increased investment in "externalizing" a large portion of their R&D. These companies have slashed internal R&D budgets, closed major R&D facilities, and made large cuts to headcount. It is estimated that the pharmaceutical industry cut R&D spending by 5.7% in the U.S. and 2.2% globally in 2012 alone,[32] and this trend has continued in 2013. Most large and mid-sized biopharmaceutical companies now have large internal groups that include a combination of business and scientific resources that are dedicated exclusively to external search and evaluation, and are tasked with finding opportunities for mergers, acquisitions, and partnerships that will bring in new technology. Some have taken this strategy even further and have set up their own internal venture capital investment groups with the belief that by co-investing with more experienced institutional venture investors they can improve their visibility into the latest innovations and improved access to the best opportunities. The Fund Managers believe that this combination of financial strength and strategic need to source more products than internal R&D efforts can produce will lead to a significant increase in deal activity, creating a strong exit environment for smaller development stage companies for the foreseeable future.

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[29] eValuatePharma
[30] Burrill Biotech 2012 Report
[31] New Leaf Analysis of public company financial data as provided by Bloomberg
[32] Battelle-R&D Magazine Annual Global R&D Funding Forecast

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The Fund Managers expect this combination of positive market conditions to remain favorable for generating attractive returns in the biopharmaceutical sector for the foreseeable future. Although industry returns have been characterized by inconsistency and generally associated with long timelines, a small number of top investors have been able to consistently build portfolios that outperform the venture capital industry and relevant public market indices. There is no substitute for experience in this sector, and the New Leaf team brings one of the most powerful and proven combinations of team, strategy, and track record to investing in this dynamic sector, and is positioned well for continued success in NLV-III.

INFORMATION CONVERGENCE INVESTMENT STRATEGY

The Fund Managers believe that U.S. is rapidly approaching a fiscal crisis that will be driven largely by rising healthcare expenditures and the exponential increase in future healthcare liabilities. This looming threat is a major driver behind Information Convergence ("I.C."), the second of the two primary focus areas in NLV-III. Governments and the private sector alike are being forced to significantly increase the efficiency of the healthcare system, and consequently are beginning to invest heavily in technologies that reduce cost and improve the quality of care. New technology solutions are emerging from the intersection of a diverse, yet interconnected set of technologies that define Information Convergence, including cloud storage, mobile computing, wireless communications, web-delivered software, big data analytics, diagnostics and sensors.

I.C. companies are integrating these technologies in ways that more cost effectively prevent, diagnose, and treat disease. These applications and products can be highly valued by addressing costly inefficiencies within the healthcare system. The Fund Managers believe I.C. will play an enabling role in many of the initiatives that will form the core of healthcare reform, including the transformation of healthcare reimbursement models from volume to value-based, and that this will be a major area of opportunity for investors for the foreseeable future.

Within I.C. the Fund will seek opportunities that target some of the largest inefficiencies in the healthcare system. These include: (1) inefficiency in delivery of care and excess administrative costs; (2) unnecessary services and missed opportunities for prevention; and (3) inflated pricing and fraud. Coming out of these large, identified problem areas are a number of discrete investable themes. These are the primary target of New Leaf's investment strategy in I.C. and they include the following:

Problem Area: Inefficient Delivery and Excess Administrative Costs

- *Investment Theme - Operational & Care Delivery Efficiency*: Process improvement and optimization can only occur when data is available to identify the problems and measure the impact of solutions. With shrinking margins and shifting value objectives, healthcare providers are under pressure to understand and improve their businesses and operations. Technologies that allow the collection and analysis of relevant data on the efficiency of care-delivery will be foundational to this evolution. **AwarePoint** (NLV-II) delivers enterprise awareness solutions for the hospital and other healthcare facilities, is an example of a company fitting this theme.

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- *Investment Theme - Care Coordination:* Today in healthcare, most conditions require the involvement of multiple healthcare professionals, including primary care physicians, specialists, nurses, assistants, and therapists, and the care they provide must be managed closely with participation from the patients themselves and their family members. Unfortunately, poor coordination and information sharing amongst caregivers creates significant inefficiencies at the points of hand-off between providers, leading to repeat tests, missed diagnoses, and expensive mistakes that diminish outcomes, and in some cases put patients at substantial risk. **TigerText** (NLV-II) has developed a secure text messaging platform that can be used on any mobile phone that allows healthcare professionals to rapidly communicate and exchange clinical data files to improve and coordinate care.

- *Investment Theme - Clinical Error Reduction:* Administrative, medication and procedural errors are responsible for billions of dollars of cost annually in the U.S. healthcare system. Many of these problems can be reduced by bringing relevant information into the right setting at the appropriate time. For example, **ePocrates** (Sprout IX, NASDAQ: EPOC – Acquired by athenahealth for $293 million, 3.1x multiple) allows physicians to quickly reference drug formulary, dosing and interaction information, thus reducing the error rate in prescriptions.

Problem Area: Unnecessary Services & Missed Prevention Opportunities

- *Investment Theme - Analytics & Data-Driven Personalization*: Many conditions are currently diagnosed on single or limited data points, measured in the hospital or physicians' office, that may not accurately reflect (or detect) the patients' condition. Examples include diseases with episodic or fluctuating symptoms such as cardiac arrhythmias, Parkinson's, Alzheimer's, depression and other behavioral health issues. **iRhythm Technologies** (NLV-II) developed and markets an innovative, highly wearable, patch technology capable of recording continuous electrocardiograms for up to 14 days. This product has demonstrated a 5x improvement in diagnostic yield for cardiac arrhythmias relative to 24 - 48 hour Holter monitoring.

  The large scale deployment of electronic medical records ("EMRs"), healthcare information exchanges, and diagnostic and monitoring technologies, is driving exponential growth in professional health data around patient care and outcomes. At the same time, patients are discussing and sharing their own health care experiences and personal health data involving providers, therapeutics, and procedures on the internet. These vast and rapidly growing professional and consumer oriented healthcare data sets create an unprecedented repository of longitudinal data on populations of patients. By mining these data sets using big-data techniques and technologies that are being deployed successfully in other industries, it is possible to identify important findings that have huge commercial value that might previously have never have been detected. Specifically, the Fund Managers believe analytics applied to these data sets will allow care gaps to be readily identified and addressed, and best practices to be frequently revised, leading to a consistent iterative cycle of improvement. **Treato** (NLV-II) has developed a social health intelligence platform (aka "Social Listening") that identifies, analyzes and aggregates medical user generated content spread widely across the web

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in thousands of blogs and other written forums and converts this unstructured content into structured information to support better-informed decision making by patients, providers, and pharmaceutical marketing teams.

- *Investment Theme - Patient Engagement / Shift to Low-Cost Setting:* As incentives move away from procedural volume and towards cost-effective quality and outcomes, providers and care delivery organizations are seeking ways to deliver care outside of the hospital or physicians' office through technologies that may allow remote monitoring, and empowers other healthcare professionals, or even patients to play a greater role in patient care and well-being. **Audax Health** (NLV-II; exited at 3.4x) touches on this theme with its *Zensey* product, which engages patients in their own health through programs endorsed by their payer.

Problem Area: Inflated Pricing & Fraud

- *Investment Theme - Price & Cost Transparency, Financial Error Reduction*: Error reduction can generate significant cost savings at the enterprise level. **Truveris** (NLV-II) allows self-insured employers to verify the accuracy of all pharmaceutical benefit claims from their pharmacy benefit managers in real time, thus resulting in more accurate payments and significant cost savings.

These are just some of the illustrative themes for I.C. investments in NLV-III. This is an emerging area with strong growth drivers, and the Fund Managers expect the opportunity set to evolve and broaden substantially over NLV-III's investment cycle.

An intriguing aspect of this sector is the possibility for significantly shortened development timelines and product iteration cycles. Particularly because they are usually outside the jurisdiction of the FDA and standard reimbursement paths, companies in the I.C. sector can develop and launch products in months not years, and for single digit millions rather than several tens of millions of dollars. Product development for these types of applications leverages "off-the-shelf technologies" in sensors, communications, software and web design/deployment that were invented and validated in non-healthcare market segments. These products can be quickly and cheaply tested, iterated and refined in the marketplace with customers while generating early revenue, which provides a greater degree of flexibility to evolve the right solution through a series of incremental improvements rather than a single track, expensive and prolonged development effort.

The Fund's I.C. investments will be predominantly in private companies in the U.S, at or near commercialization. Similar to the biopharmaceutical strategy, New Leaf's objective in its I.C. investments is to build ownership positions that are large enough to allow the Fund Managers to exert influence on the company, and to actively manage the investments through board participation. In certain circumstances, NLV may initially take smaller positions with plans to significantly increase the Fund's investment as the companies make progress through key early technical or commercial hurdles. Utilizing this strategy, the Fund Managers expect to build larger positions around select investments as they are progressively de-risked, and may not continue to support investments that do not demonstrate appropriate progress.

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The New Leaf team is one of the most experienced and proven teams in this sector. The Fund Managers' combination of proven track record, in-depth knowledge of the medical device and diagnostics fields, a strong current I.C. portfolio, and a thought-leading network of I.C. advisors, puts New Leaf in a position of leadership within this sector.

MEDICAL DEVICES INVESTMENT STRATEGY

NLV-III's investment strategy in medical devices will focus on identifying a limited number of investment opportunities in companies with compelling later stage risk profiles. The Fund will seek to identify investments in companies that are developing innovative and differentiated medical devices, targeting large market opportunities, that offer the potential to meaningfully reduce overall patient treatment costs in high morbidity disease settings through substantial efficacy and safety benefits versus existing standards of care. Investments in this sector will have established regulatory approval pathways and clear regulatory precedents, or are already at the commercial stage at the time of initial investment. The objective will be to identify companies that because of their specific therapeutic area or technology focus, or because the company already has received key regulatory approvals, that they will be less affected by the headwinds that are challenging the sector more broadly. Importantly, these investments will be in therapeutic areas that are known to be of high strategic interest to a number of larger medical device companies, and thus have a high potential of generating M&A interest. The primary risks in these investments will be mostly operational execution, competition, and other market related risks.

Similar to the second half of the investment period for NLV-II, the Fund will have a more limited focus on medical device investments in NLV-III compared to previous funds. The slower projected pace of investment is based on the view that the operating and exit environment for companies in this sector will continue to be challenging due to increased regulatory and reimbursement uncertainty in the U.S. and E.U. These headwinds have resulted in increased development costs and significantly lengthened timelines for most development stage companies.

While the Fund Managers expect to see fewer compelling investment opportunities than have been available historically in the medical device sector, they do believe that they will be able to identify and source a number of later stage opportunities that are less affected by these obstacles, and that these will be attractive investment opportunities for NLV-III. One factor that supports this view is that the reduced level of competition for deals resulting from the decline in the number of active venture capital firms mentioned previously is even more pronounced in the medical device sector. Given New Leaf's historic leadership within this sector, and its clear commitment to remain active during this period of reduced funding, the Fund Managers expect that they will have excellent deal flow. Although the number of deals in this sector is likely to be somewhat lower than in previous funds, with the later stage focus, it is likely that the size of investments in this sector will be larger. Recent medical device investments in the New Leaf portfolio that fit this later stage definition include: **Neuronetics** (NLV-II, commercial stage), **CardioKinetix** (NLV-II, clinical development stage), and **Interlace Medical** (NLV-I, start-up focused on 510k product, acquired by Hologix, exited at 8.6x).

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BIOLOGICAL RESEARCH TOOLS & INFRASTRUCTURE INVESTMENT STRATEGY

NLV-III's investment strategy in Biological Research Tools and Infrastructure will focus on identifying companies that are at or near the commercial stage with novel products targeting established, high growth markets -- such as DNA sequencing and personalized medicine. The products of interest will be those based on differentiated technologies that offer higher quality biological results at significant cost savings to customers than current products. The investment theses for these companies will be based on rapidly building high-gross margins businesses that reach break-even on manageable timelines and limited capital budgets. An example of a tools company in the New Leaf portfolio is **Advanced Cellular Diagnostics** (NLV-II, commercial stage).

Research tools and infrastructure technology companies are benefiting from several positive healthcare industry tailwinds. Technology advancements over the past decade, such as genomic sequencing and personalized diagnostics, have generated the need for additional reagents and instruments to efficiently interrogate vast amounts of biological samples and process massive quantities of resulting data. Unlike biopharmaceutical or medical device product development, these new reagents are not subject to the risks of costly clinical trials, regulatory approvals and payer reimbursement. Thus, timelines are more manageable and predictable, and budgets are much more capital efficient. In fact, in this sector, the Fund Managers expect to identify opportunities for investment in technologies that have been largely de-risked, are commercial-ready, and can be funded to profitability on VC dollars. While substantial commercial adoption will likely be required for most companies in this sector to be acquired, given the high margins, rapid sales adoption, and relatively low sales and marketing costs, funding the launch of a new tool or technology in this sector can represent an attractive risk-reward investment.

This dynamic sector is growing rapidly and small companies have been a prolific source of innovative new products for the large, established companies that dominate the commercial distribution channels. The Fund will approach this sector opportunistically and will invest in a small number of companies with novel and clearly differentiated products targeting sectors of rapid growth that are at or near the commercial stage.

The Fund Managers expect investments in this sector and the medical device sector to comprise up to 15% of the Fund.

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VI. DEAL SOURCING & INVESTMENT PROCESS

The Fund Managers have a proactive approach to deal sourcing, which focuses on both private and public opportunities. The established and proven sourcing activities seek to identify the most compelling healthcare technology investment opportunities, at the most attractive time points for venture capital investment. The Fund Managers' goal is to identify opportunities that are based on the most interesting novel and proprietary technologies, but place their emphasis on being positioned for investing in these technologies in the round(s) that offer the most attractive risk-adjusted returns potential. These investment opportunities are identified through a number of parallel efforts, including:

- Systematic tracking of private and public companies that have product programs and technologies targeting disease areas and biological targets of high interest that are approaching key value inflection points. Current activities include comprehensive screening of companies with programs targeting high unmet medical needs where the strength of the science coupled with a rapid and lower capital intensity development path, provides a compelling risk-reward case for investment. At the present time, the Fund Managers are tracking a biopharma investment universe of approximately 1,000 mid-late stage private and small-cap public companies, many of which are in therapeutic areas of specific interest to the Fund Managers (e.g. Oncology, Infectious Disease, Central Nervous System, etc.);

- Continuous contact with a network of current and former portfolio company management teams;

- Networking with current and former senior management team members from leading pharmaceutical, biotech, medical device, and HIT companies to understand their strategic priorities and to identify assets/programs that may become available for spinouts or structured financings;

- Staying up to date and in contact with leading academic thought leaders working in NLV's fields of interest;

- Active coverage of major investor, medical and scientific meetings; and

- Working closely with other venture capitalists with overlapping interests to ensure NLV sees the broadest range of high quality opportunities and are positioned for working with the strongest syndicates.

A key success factor behind the Fund Managers' deal sourcing activities is a strong network of entrepreneurs, industry executives, renowned clinicians, leading academic scientists, other venture investors, and experienced consultants. The Fund Managers believe that this network plays a critical role in helping to identify the most interesting opportunities, bringing the leading resources to bear to assist in due diligence, and in providing important technical and recruiting support in building portfolio companies. The Fund Managers continuously invest time and energy in updating and building this strong network to ensure access to the managers and thought leaders that are the industry's leaders in the sectors of interest.

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The New Leaf team applies a rigorous, systematic, fundamentals-driven approach to diligence on all new deals, which, in addition to assessment against the sector specific strategies, includes consideration of the following risk/reward factors:

- Medical need and market size
- Competing therapies, both drugs and devices
- Strength of intellectual property
- Ease of physician adoption of new therapy
- Specific details of clinical trial design and trial execution risks
- Regulatory and reimbursement risks across relevant geographies
- Management team's ability to both execute the business plan and the exit
- Time and money required to reach next important milestone(s)
- Likely exit; potential acquirers, IPO prospects.

The Fund Managers will continue their proven investment philosophy and investment process, which emphasizes a team approach to proactive deal sourcing, rigorous investment analysis, significant involvement with portfolio companies and active management of investments and exits, and a focus on key "risk inflection" points based on the disease and technology. Investments will include both development stage and start-up stage companies, as well as growth equity or expansion capital investment in NLV-III's targeted sectors, in the private and public markets.

The Fund Managers have a long history of separating the roles of transaction finder, negotiating/closing the transaction, and board member, as needed. New Leaf seeks to put the most appropriate investment professional on the board of companies, based on experience. The Fund Managers have fostered a culture that discourages any professional from feeling the need to control all aspects of an investment. Credit is given for each professional's role, and for each team member's ability to be a team player. New Leaf seeks to avoid "lone ranger" behavior and instead actively implements a team approach.

The Fund Managers intend to create a very selective portfolio of 24 to 28 companies, which will include a balanced mix of investments in private companies and small capitalization public companies. The targeted portfolio is expected to be diversified across biopharmaceuticals (50 - 60%), information convergence (up to 25%), and the remainder across investments in later stage medical device and biological tools and infrastructure companies. While the Fund Managers believe this distribution of investments is the most likely outcome, it also intends to take full advantage of pricing discontinuities should they emerge in any of the identified sectors of interest, possibly resulting in variance from this targeted allocation.

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VII. ONGOING RELATIONSHIP WITH SPROUT FUNDS

Since 2005, the Fund Managers have managed the remaining portfolio of healthcare technology investments in Sprout Capital VII, L.P., Sprout Capital VIII, L.P., and Sprout Capital IX, L.P. under a Sub-Management Agreement between Credit Suisse and New Leaf Venture Partners, L.L.C. (the "**Management Company**"). In return for these management services, the Management Company had received a portion of the management fee collected by those Sprout funds related to the healthcare portfolio.

At the present time, Sprout Capital IX, L.P. is the only fund with any remaining active healthcare technology investments. There were six active health care technology companies (three board seats) in the Sprout Capital IX, L.P. portfolio that are managed by the Fund Managers, which represented $68 million of carrying value as of March 31, 2014. These remaining investments are in mature companies and the Fund Managers intend to continue to manage the investments with an emphasis on finding exit opportunities for each company at an appropriate time. The Fund Managers have already exited a portion of these companies in early 2014, leaving a very limited tail of Sprout investments and board seats.

The Fund Managers expect the arrangement with Credit Suisse to continue for the foreseeable future, but the Management Company no longer receives any management fees for these services. The Sub-Management Agreement between Credit Suisse and the Management Company will wind down and eventually be terminated as the investments in the Sprout Capital IX, L.P. portfolio are exited.

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VIII. SUMMARY OF PARTNERSHIP TERMS

The following information is presented as a summary of the Fund's principal terms only and is qualified in its entirety by reference to the Fund's Amended and Restated Limited Partnership Agreement (as amended, restated or otherwise modified from time to time, the "Partnership Agreement") and the subscription agreement relating thereto (together with the Partnership Agreement, the "Agreements"), copies of which will be provided to each prospective investor prior to the acceptance of any subscription. Prior to making any investment in the Fund, the forms of such Agreements should be reviewed carefully. If the terms described in this Memorandum are inconsistent with or contrary to the terms of the Agreements, the Agreements shall control.

The Fund: New Leaf Ventures III, L.P., a Delaware limited partnership (the "Fund").

General Partner: New Leaf Venture Associates III, L.P., a Delaware limited partnership (the "General Partner"), is the sole general partner of the Fund. The general partner of the General Partner is New Leaf Venture Management III, L.L.C., a Delaware limited liability company (the "GPLLC"). The initial managing members (the "Principals") of the GPLLC are Philippe Chambon, Jeani Delagardelle, Ronald Hunt, Vijay Lathi and Liam Ratcliffe.

Investment Objective: To generate significant returns, principally through long-term capital appreciation, by making, holding and disposing of equity and equity-related investments, principally in healthcare, medical device and life sciences companies.

Size of Offering: The Fund is targeting capital commitments ("Commitments") of $375 million with respect to limited partner interests (the "Limited Partner Interests"). The General Partner may accept a greater or lesser amount of Commitments from Limited Partners (as defined below) in its discretion.

Minimum Investment: The minimum capital commitment of a limited partner to the Fund (collectively, the "Limited Partners" and together with the General Partner, the "Partners") will be $5 million, although individual capital commitments of lesser amounts may be accepted at the discretion of the General Partner. The General Partner may, in its discretion, reject any subscription that is tendered.

Closing(s): The initial closing will occur as soon as practicable. The General Partner may hold additional closings thereafter; provided that the final closing will occur no later than 12 months after the initial closing (the "Final Closing Date").

Each Limited Partner admitted at a subsequent closing will be

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required to contribute the same percentage of its Commitment as each of the other Limited Partners had been required to contribute prior to such closing plus an additional amount, calculated like interest at the prime rate plus 2% per annum, compounded quarterly, on the amount of such contribution.

General Partner Commitment

The General Partner will commit to the Fund at least 1.5% of the aggregate Commitments of the Partners.

Term:

10 years, subject to the General Partner's right to extend the term for up to three one-year periods, with the approval of the Advisory Board (as defined below).

Drawdowns:

Commitments are expected to be drawn down on an as needed basis, generally, with not less than 10 business days' prior written notice. The initial capital contributions of the Partners will be due on not less than 7 business days' prior written notice.

Investment Period:

The Partners will have no obligation to make additional capital contributions to fund new investments during a Suspension Period (as defined below) or after the period commencing on the Fund's initial closing date and ending on the earliest of (i) the fifth anniversary of the Final Closing Date and (ii) the date on which a Suspension Period becomes permanent (the "Investment Period"); provided, however, that the Partners will have a continuing obligation to make capital contributions to fund prospective investments in process, follow-on investments, and to pay Fund expenses and other Fund obligations (including, without limitation, the Management Fee (as defined below) and indemnification obligations).

Diversification & Investment Limitations:

Without the approval or ratification of the Advisory Board:

(a) the Fund's total investment in any single Portfolio Company shall not exceed 10% of the aggregate Subscriptions of all Partners;

(b) the Fund's total investment in Portfolio Companies organized in jurisdictions outside of the United States and Canada shall not exceed 15% of the aggregate Subscriptions of all Partners;

(c) the Fund may not as of any time invest more than 10% of the aggregate Subscriptions of all Partners in open market purchases of securities that, at the time of investment, are traded on a Public Securities Market and are being purchased as a stand-alone passive investment; provided, however, that for the avoidance of doubt, the foregoing restriction shall not apply

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to Temporary Investments, "PIPES" and other purchases of securities in private placements that are not traded on a Public Securities Market at the time of such investment, "toe-hold" investments (e.g. investments that are intended to lead to a potential private or larger investment), Portfolio Investments where the Partnership has the right to designate a director, and follow-on investments in or related to the foregoing;

(d) the Fund shall not invest in the securities of any other pooled investment vehicle with respect to which any Person is entitled to a share of profits (whether in the form of fees, distributions or otherwise) disproportionate to its share of the contributed capital of the vehicle unless the General Partner arranges for a reduction in the Management Fee in the amount of the "management fee" and "carried interest" attributable to the Fund's interest in such vehicle; provided, however, that the Fund shall not, without the approval or ratification of the Advisory Board, invest more than 5% of the aggregate Subscriptions of all Partners in the securities of any such pooled investment vehicle; and provided, further, however, that nothing herein shall prevent the Fund from (1) investing the Fund's cash in a regulated investment company or similar entity or fund sponsored by a bank subject to the Bank Holding Company Act as a Temporary Investment or (2) investing in operating businesses through an alternative investment vehicle; or

(f) The Fund shall not invest in any uncovered options, futures contracts or other derivative securities, or sell securities short in an uncovered transaction.

Advisory Board: The Fund will have a limited partner advisory board (the "Advisory Board") consisting of at least three persons chosen by the General Partner from persons associated with the Limited Partners; provided that neither the General Partner nor any of its affiliates may be a member of the Advisory Board. The duties of the Advisory Board (or its committees) shall be to: (a) be available to offer advice to the General Partner regarding the activities of the Fund; (b) review and advise the General Partner regarding transactions involving potential conflicts of interest submitted to them by the General Partner; (c) approve the valuation methodology formulated by the General Partner for determining the value of the Fund's assets and review periodic valuations submitted to it by the General Partner; and (d) undertake such other duties as are required by this Agreement or reasonably requested by the General Partner.

Limited Reinvestment: Without the consent of the Advisory Board, the General Partner shall not permit the aggregate purchase price of long-term investments to exceed 110% of aggregate Commitments.

Distributions: All distributions prior to the dissolution of the Fund will be made at such times and in such amounts as the General Partner shall determine. All such distributions will be apportioned among the Partners as follows:

(i) First, 100% to all Partners in proportion to their capital contributions until each Partner has received distributions in an amount equal to such Partner's capital contributions; and

(ii) Thereafter, 20% to the General Partner and 80% to all Partners in proportion to their respective capital contributions.

With respect to any fiscal year, the Fund may make cash distributions to the Partners in amounts intended to defray the Partners' tax liability resulting from their interests in the Fund during such fiscal year.

Liquidating distributions will be made in accordance with positive capital account balances.

Allocations: The Fund will maintain capital accounts on behalf of each Partner in accordance with U.S. Federal income tax requirements. In general, any cumulative net loss will be allocated to the capital accounts of the Partners in proportion their contributions, and any cumulative net gain will be allocated 20% to the capital account of the General Partner and 80% to the capital accounts of all Partners in proportion to their contributions. Notwithstanding the foregoing, items of expense will be allocated to the Partners in proportion to their contributions and will be offset by subsequent allocations of net profit (to the extent thereof), provided that the General Partner will not be allocated any items of expense attributable to the Management Fee.

General Partner Clawback: If, after the Fund has made its final liquidating distribution, the General Partner has received aggregate distributions with respect to its "carried interest" in excess of the cumulative net profit allocated to the General Partner with respect to its "carried interest," the General Partner will return to the Fund the amount of that excess; provided, however, that in no event shall the General Partner be required to return to the Fund an amount in excess of the aggregate distributions made to the General Partner that are attributable to its "carried interest" less tax distributions. All carry recipients shall be severally, but not jointly, liable for their respective proportional shares of the

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General Partner's return obligation set forth in the preceding sentence; provided, however, that in no event shall any carry recipient be required to return to the Fund an amount in excess of the aggregate distributions made to it that are attributable to the General Partner's "carried interest" less tax distributions with respect thereto.

Management Fee:

The Fund will enter into a management agreement with New Leaf Venture Partners, L.L.C., a Delaware limited liability company, or an affiliate thereof (the "Management Company") to provide management and administrative services to the Fund.

The Fund will pay the Management Company an annual management fee (the "Management Fee") equal to 2.5% per annum of Commitments, payable in advance on a quarterly basis. For each successive twelve-month period beginning on the first day of the fiscal quarter following the date which is the fourth anniversary of the Final Closing Date, the percentage used in calculating the annual Management Fee shall be determined by multiplying the percentage used to determine the Management Fee for the prior twelve-month period by 88%; provided, however, in no event shall such percentage be reduced below 1.35% per annum.

Commitment, Break-Up and Monitoring Fees:

100% of all directors' fees, consulting fees, commitment fees, monitoring fees, investment banking, transaction or break-up fees or other remuneration (excluding directors' fees and options for service on the board of a publicly-traded portfolio company) paid by the Fund's portfolio companies to the General Partner, the Management Company or the Managers ("Portfolio Company Remuneration"), net of expenses, will be treated as an offset to the Management Fee; provided, however, that the Management Fee shall not be reduced below zero. Any reimbursement of the General Partner, the Management Company or the Managers for out-of-pocket expenses incurred on behalf of a portfolio company will not offset the Management Fee.

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Organizational Expenses: The Fund will bear expenses relating to the organization of the Fund and its affiliates and the offering of the Limited Partner Interests, including legal, accounting, travel, meeting, printing and other administrative expenses, up to an aggregate of $1,250,000. The Management Fee will be reduced by organizational expenses paid by the Fund in excess of this amount and by any placement fees paid by the Fund.

Operating Expenses: The Management Company will assume and pay all normal operating expenses attributable to the Fund's investment activities, including all routine, recurring expenses incident to the investment activities of the Fund; compensation and expenses of the employees of the Management Company and fees and expenses for administrative, clerical and related support services, maintenance of books and records for the Fund, office space and facilities, utilities, telephone and travel insofar as they relate to the investment activities of the Fund.

In addition to the Management Fee, the Fund will be responsible for all other costs and expenses of the Fund that are not reimbursed by third parties, including without limitation, organizational expenses and placement fees (each as described above); liquidation expenses of the Fund; any sales or other taxes, fees or government charges which may be assessed against the Fund; commissions or brokerage fees or similar charges incurred in connection with the purchase or sale of securities (including any merger fees payable to third parties and whether or not any such purchase or sale is consummated); fees and compensation (if any) and expenses of members of the Advisory Board (including travel-related costs and expenses); the fees and compensation (if any) and expenses of any technical or scientific advisory board with which the Fund consults; the costs and expenses (including travel-related expenses) of hosting annual or special meetings for the Partners of the Fund, or otherwise holding meetings or conferences with Partners of the Fund, whether individually or in a group; fees and expenses for consulting services; interest expense for borrowed money (if any); all expenses relating to litigation and threatened litigation involving the Fund, including indemnification expenses; expenses attributable to normal and extraordinary investment banking, commercial banking, accounting, appraisal, legal, custodial and registration services provided to the Fund, including in each case services with respect to the proposed purchase or sale of securities by the Fund that are not reimbursed by the issuer of such securities (whether or not any such purchase or sale is consummated and including expenses incurred by the tax matters partner);

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premiums for liability insurance to protect the Fund, the General Partner, the partners of the General Partner, the members of the GPLLC, the members of the Advisory Board, and any of their respective partners, members, stockholders, officers, directors, trustees, employees, agents or affiliates in connection with the activities of the Fund and premiums to pay "key-man" insurance; and all other expenses properly chargeable to the activities of the Fund.

Distributions may be recalled for up to one year following the date of liquidation of the Fund to satisfy (1) any obligations, liabilities and other expenses that arise from the Fund's Portfolio Investments and (2) the Fund's indemnification obligations; provided that no Partner shall be required to return an aggregate amount greater than the lesser of (A) the aggregate amount of distributions made to such Partner (and such Partner's predecessors in interest) and (B) 25% of such Partner's Commitment

Key Person Event:

The General Partner shall promptly notify the Advisory Board in writing if, prior to the end of the Investment Period, fewer than three Principals satisfy their obligation to devote substantially all of their business time to the affairs of the Management Company and its affiliates (including by reason of death or disability) for a period exceeding 60 days. Following any such occurrence, the Fund shall not make any new portfolio investments other than permitted investments (a "Suspension Period), unless such Suspension Period is lifted as provided in the Partnership Agreement.

No Fault Termination of the Investment Period:

Eighty-five percent in interest of the Limited Partners may cause a termination of the Investment Period at any time after the second anniversary of the Initial Closing Date, with such termination to be effective as of the date they deliver written notice of such termination to the General Partner, after which the Fund shall not make any new portfolio investments other than permitted investments as set forth in the Partnership Agreement.

No Fault Termination of the Fund:

Eighty per cent in interest of the Limited Partners (excluding affiliates of the General Partner) may vote to dissolve the Fund at any time after the second anniversary of the initial closing date upon 120 days' notice.

Removal of the General Partner for Cause:

66 2/3% in interest of the Limited Partners may remove the General Partner upon the occurrence of certain cause events specified in the Partnership Agreement.

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Transferability of Interests and Withdrawal: A Limited Partner may not sell, assign, or transfer any interest in the Fund or withdraw from the Fund except under certain limited circumstances and with the prior written consent of the General Partner.

Borrowings and Guarantees: The Fund may borrow money on a short-term basis pending drawdowns of capital contributions in an aggregate amount outstanding at any time not exceeding 15% of aggregate Commitments, or such greater amount as is otherwise approved by the Advisory Board; provided that the maturity of any such borrowing shall not exceed 90 days. The Fund may guarantee the indebtedness of any portfolio company; provided, however, that, without the approval of the Advisory Board, the total amount of outstanding Fund guarantees shall not exceed 15% of aggregate Commitments.

Default: If any Limited Partner defaults in the payment of any part of its Commitment when due, it will be subject to significant penalties as specified in the Partnership Agreement, including forfeiture of all or a portion of such Limited Partner's interest in the Fund.

Reports: The Partners will receive (i) audited annual financial statements, (ii) unaudited quarterly financial statements for the first three quarters of each fiscal year, (iii) annual tax information necessary for completion of their income tax returns and (iv) periodically certain descriptive information related to portfolio investments. Reports and information, and the General Partner's obligation to provide such reports and information, will be subject to confidentiality restrictions and limitations as set forth in the Partnership Agreement. Each Limited Partner will be required to maintain information provided to it about the Fund, its business and portfolio investments in the strictest confidence and to not disclose such information except in certain limited circumstances.

Parallel Funds: In order to facilitate investments by certain investors, the General Partner may create parallel or other investment vehicles or investment advisory programs, the structure of which may differ from that of the Fund but which will generally invest proportionately in all portfolio investments on substantially the same terms and conditions as the Fund, subject to applicable investment restrictions.

Alternative Investment Vehicles: If the General Partner determines that for legal, tax or regulatory reasons that an investment should be made through an alternative investment vehicle, the General Partner may structure the making of all or a portion of such investment

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outside the Fund, by requiring some or all of the Limited Partners to make such investment through a limited liability entity that will invest on a parallel basis with, or in lieu of, the Fund, as the case may be.

Successor Fund:

Without the prior written consent of the Advisory Board, none of the General Partner, the GPLLC or any Principal may hold an initial closing for a limited partnership or other investment vehicle with an investment strategy substantially similar to the Fund (a "Successor Fund") prior to the earlier of (i) the end of the Investment Period and (ii) the date on which at least 70% of aggregate Commitments of all Partners have been invested, expended, committed, or reserved for future investments in existing portfolio companies or for reasonably anticipated Fund expenses.

Exculpation and Indemnification:

None of General Partner, the partners of the General Partner, the members of the GPLLC, the Principals, the Management Company, or any partner, member, stockholder, officer, director, manager, trustee, employee, agent or affiliate of any of the foregoing shall be liable to the Fund or any Partner for any loss suffered by the Fund or any Partner which arises out of any investment or any other action or omission of such person if (a) such person acted in good faith and reasonably believed that such course of conduct was in, or not opposed to, the best interest of the Fund and (b) such conduct did not constitute a breach of such person's fiduciary duty (if any) to the Fund, gross negligence, intentional misconduct, intentional and material breach by such person of its obligations under the Partnership Agreement (provided that such breach is not cured within 60 days of notice from a majority in interest of the Limited Partners of such breach), a willful violation of law or the commission of a felony.

No member of the Advisory Board or any other board or committee formed to assist or advise the General Partner and no Limited Partner who may have designated such member shall be liable to the Fund or any Partner for any loss suffered by the Fund or any Partner which arises out of any action or omission of such member, provided that such member acted in good faith and reasonably believed that such course of conduct was in, or was not opposed to, the best interest of the Fund and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

The General Partner, the partners of the General Partner, the members of the GPLLC, the Principals, the Management Company, each liquidator, each member of the Advisory Board

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or any other board or committee formed to assist or advise the General Partner, each Limited Partner that designated a member of the Advisory Board, and each partner, member, stockholder, director, officer, manager, trustee, employee, agent and affiliate of any of the foregoing shall be indemnified by the Fund against any claim, demand, controversy, dispute, cost, loss, damage, expense (including attorneys' fees), judgment and/or liability incurred by or imposed upon the indemnitee in connection with any action, suit or proceeding to which the indemnitee may be made a party or otherwise involved or with which the indemnitee shall be threatened, in connection with their activities on behalf of, or their association with, the Fund; provided, however, that such an indemnitee, other than an indemnitee acting in his capacity as a member of the Advisory Board or any other board or committee formed to assist or advise the General Partner and a Limited Partner who has designated such member, shall not be indemnified with respect to matters as to which the indemnitee shall have been finally adjudicated in any such action, suit or proceeding (a) not to have acted in good faith and in the reasonable belief that the indemnitee's action was in, or not opposed to, the best interests of the Fund or (b) to have committed a breach of such person's fiduciary duty (if any) to the Fund, gross negligence, intentional misconduct, intentional and material breach by such person of its obligations under the Partnership Agreement (provided that such breach is not cured within 60 days of notice from a majority in interest of the Limited Partners of such breach), a willful violation of law or the commission of a felony. An indemnitee either acting in his capacity as a member of the Advisory Board or any other board or committee formed to assist or advise the General Partner or that is a Limited Partner who has designated such member shall not be indemnified with respect to matters as to which the indemnitee shall have been finally adjudicated in any such action, suit or proceeding (1) not to have acted in good faith and in the reasonable belief that the indemnitee's action was in, or not opposed to, the best interests of the Fund or (2), with respect to any criminal action or proceeding, such person had reasonable cause to believe that his or her conduct was unlawful.

Notwithstanding the foregoing, in no event will the Fund provide indemnification to any indemnitee for any action or omission taken by such indemnitee in such person's capacity as a director of any portfolio company in which the Fund no longer holds an investment, to the extent such liabilities solely relate to activities of such person during the period commencing 18 months after the date on which the Fund has sold or otherwise disposed of its entire interest in such portfolio

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company.

Certain ERISA Considerations: Under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), fiduciaries of prospective investors that are retirement plans subject to ERISA ("ERISA Plans") must determine that an investment in the Fund is prudent, that such investment satisfies the requirement that plan assets be diversified and that such investment complies with the other requirements applicable to ERISA Plans. The General Partner intends to conduct the operations of the Fund so that it will be an appropriate investment for ERISA Plans. In particular, the General Partner will use reasonable best efforts to conduct the affairs and operations of the Fund in such a manner so that the assets of the Fund will not be treated as "plan assets" of any ERISA Plan for purposes of ERISA. Prospective investors that are ERISA Plans are advised to consult their own advisors as to the effect of ERISA (or other applicable law) on an investment in the Fund. The fiduciary of each prospective ERISA Plan investor must independently determine that the Fund is an appropriate investment for such ERISA Plan, taking into account the fiduciary's obligations under ERISA and the facts and circumstances of each investing ERISA Plan. (See Section X, "Certain Tax and ERISA Considerations.")

U.S. Tax-Exempt Investors: Prospective investors are advised to consult their own tax advisors as to the tax consequences of an investment in the Fund. Subject to certain exceptions, the General Partner will use reasonable best efforts to conduct the affairs of the Fund in a manner that is not expected to cause any tax- exempt partner to realize any "unrelated business taxable income" within the meaning of Sections 512 through 514 of the Code. (See Section X, "Certain Tax and ERISA Considerations.") The General Partner's undertaking will be deemed satisfied with respect to the making, holding or disposing of any portfolio investment if the tax exempt U.S. Partners are given the opportunity to (or if all Limited Partners are otherwise required to) hold their proportionate shares of such portfolio investment directly or indirectly through an alternative investment vehicle treated as a corporation for U.S. federal income tax purposes.

Non-U.S. Investors: Prospective investors are advised to consult their own tax advisors as to the tax consequences of an investment in the Fund. Subject to certain exceptions, the General Partner will use commercially reasonable efforts to conduct the affairs of the Fund in a manner that is not expected to cause the Fund to be treated for United States federal income tax purposes as engaged in a "trade or business within the United States,"

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within the meaning of Section 864(b) of the Code. (See Section X, "Certain Tax and ERISA Considerations.") The General Partner's undertaking will be deemed satisfied with respect to the making, holding or disposing of any portfolio investment if the Non U.S. Partners are given the opportunity to (or if all Limited Partners are otherwise required to) hold their proportionate shares of such portfolio investment directly or indirectly through an alternative investment vehicle treated as a corporation for U.S. federal income tax purposes.

Risk Factors: An investment in the Fund involves a high degree of risk. Prospective investors should carefully review the matters discussed under Section IX, "Certain Investment Considerations."

Legal Counsel: Proskauer Rose LLP

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IX. CERTAIN INVESTMENT CONSIDERATIONS

An investment in the Fund entails a significant degree of risk and, therefore, should be undertaken only by investors capable of evaluating the risks of the Fund and bearing the risks it represents. There can be no assurance that the Fund's investment objectives will be achieved or that an investor will receive a return of its capital, and therefore, an investor should only invest in the Fund if such investor is able to withstand a total loss of its investment. In addition, there will be occasions when the General Partner and its affiliates may encounter potential conflicts of interest in connection with the Fund. Prospective investors in the Fund should carefully consider the following factors in connection with an investment in the Fund. The following is not a complete list of all risks involved in connection with an investment in the Fund. In addition to the items discussed below, prospective investors should also consider the information described in Section XI, "Certain Tax & ERISA Considerations" and elsewhere in this Memorandum. Prospective investors are cautioned not to rely on the prior returns set forth in this Memorandum in making a decision whether or not to purchase the Limited Partner Interests offered hereby. The return information contained in this Memorandum has not been audited or verified by any independent party and should not be considered representative of the returns that may be received by an investor in the Fund. Past performance is not a guarantee of future results.

Risk of Venture Capital Investments

While venture capital investments offer the opportunity for significant gains, such investments also involve a high degree of business and financial risk and can result in substantial losses. Among these risks are the general risks associated with investing in companies at an early state of development or with little or no operating history, companies operating at a loss or with substantial variations in operating results from period to period, and companies with the need for substantial additional capital to support expansion or to achieve or maintain a competitive position. Such companies may face intense competition, including from companies with greater financial resources, more extensive development, manufacturing, marketing and service capabilities and a larger number of qualified managerial and technical personnel. Due to the limited number of investments that the Fund may make, poor performance by some of the Fund's investments could significantly affect the total returns to Limited Partners.

Focused Investment Strategy

The Fund will be focused on life sciences and healthcare technology investments and may not enjoy the reduced risks of a broadly diversified portfolio. A specific investment focus is inherently more risky and could cause the Fund's investments to be more susceptible to particular economic, political, regulatory, technological or industry conditions or occurrences compared with a fund, or a portfolio of funds, that is more diversified or has a broader industry focus.

Risks Associated with Investments in Life Sciences and Healthcare Technology Companies

The success of the Fund's portfolio companies may be dependent upon obtaining certain governmental approvals. Companies in the life sciences and healthcare technology industry typically require the approval of agencies such as the FDA prior to marketing their products to the public. Of particular significance are the FDA requirements covering research and development, testing, manufacturing, quality control, labeling and promotion of drugs for human use. The approval process is very lengthy and very costly, and there can be no guarantee that a portfolio company will obtain the necessary approvals for its products. If a portfolio company is unable to obtain these approvals in a timely fashion, the portfolio

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company may experience significant adverse effects, which in turn could negatively affect the performance of the Fund. Moreover, the current regulatory framework may change or additional regulations may arise at any stage during the product development phase of a portfolio company, which may affect the company's ability to obtain approval of its products.

The Fund may invest in companies that will need to obtain patents for their products, both in the U.S. and in other countries. The patent protection of the intellectual property of healthcare technology companies in many countries is highly uncertain and involves complex legal, scientific and factual issues. The policy regarding allowable claimed subject matter of life sciences or healthcare technology patents varies from jurisdiction to jurisdiction.

Dependence on Single Products

Companies in which the Fund invests may only have one product under development. There can be no assurance that the product will be approved for marketing by the FDA or any foreign regulatory agency. Further, competition to the product may develop from other new and existing products. In either case, if a company is dependent on that one product, the consequences of such failure could be devastating to the prospects of such company, which in turn could negatively affect the performance of the Fund.

Dependence on Reimbursement and Third-Party Pricing Policies for Products

The ability of the Fund's portfolio companies to commercialize any product candidate successfully also will depend in part on the extent to which reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels. A major trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and third-party payors, particularly Medicare, have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. Portfolio companies cannot be sure that coverage and reimbursement will be available for any product that they commercialize, and, even if these are available, the level of reimbursement may not be satisfactory.

Reimbursement may affect the demand for, or the price of, any product candidate for which a portfolio company obtains marketing approval. Obtaining and maintaining adequate reimbursement for a portfolio company's products may be particularly difficult because of the higher prices often associated with drugs administered under the supervision of a physician or because a drug may be administered in combination with other drugs that may carry high prices. A portfolio company may be required to conduct expensive pharmacoeconomic studies to justify coverage and reimbursement or the level of reimbursement relative to other therapies. If coverage and adequate reimbursement are not available or reimbursement is available only to limited levels, a portfolio company may not be able to successfully commercialize any product candidate for which it obtains marketing approval. This, in turn, could negatively affect the performance of the Fund.

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There may be significant delays in obtaining reimbursement for newly approved drugs, and coverage may be more limited than the purposes for which the drug is approved by the FDA or similar regulatory authorities outside the United States. Moreover, eligibility for reimbursement does not imply that any drug will be paid for in all cases or at a rate that covers a portfolio company's costs, including research, development, manufacture, sale and distribution. Interim reimbursement levels for new drugs, if applicable, may also not be sufficient to cover a portfolio company's costs and may not be made permanent. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost drugs, and may be incorporated into existing payments for other services. Net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies. A portfolio company's inability to promptly obtain coverage and profitable payment rates from both government-funded and private payors for any approved products that a portfolio company may develop could have a material adverse effect on its operating results, its ability to raise capital needed to commercialize products and its overall financial condition. This, in turn, could negatively affect the performance of the Fund.

Political Risk; Current and Future Healthcare Reforms

Political events can have an impact on pharmaceutical and biotechnology companies. There can be no guarantee that government's role in the healthcare industry will not adversely impact the performance of the Fund.

In both the U.S. and foreign markets, sales of healthcare products and services and their success will depend in part on the availability of reimbursement from third-party payors such as government health administration authorities, private health insurers, and other organizations. The levels of revenues and profitability of providers of healthcare products and services may be affected by the continuing efforts of governmental and third-party payors to contain or reduce the costs of health care. Significant uncertainty exists as to the reimbursement status of newly approved health care products. There can be no assurance that a company's proposed products or services will be considered cost-effective or that adequate third-party reimbursement will be available to enable a company to maintain price levels sufficient to realize an appropriate return on its investment.

Moreover, there continues to be significant interest among policy makers and government and private payors in the United States and foreign jurisdictions in promoting changes in healthcare systems to contain healthcare costs and improve the overall quality of care and wellness.

For example, on March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, which Congress modified pursuant to the Health Care and Education Reconciliation Act of 2010 (collectively, the "Act"). The Act expands insurance coverage to more individuals, which could have a negative impact on the pharmaceutical industry. Among the aspects of the Act that may have an adverse impact on the Fund are (i) mandatory annual fees on pharmaceutical manufacturers, (ii) discounts of 50% on brand name prescription drugs for certain Medicare Part D beneficiaries (i.e., those who are required to pay 100% of their

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prescription drug costs during the temporary "gap" from Medicare coverage until their prescription drug costs reach the threshold for catastrophic coverage by Medicare), (iii) an approval process for generic biologics and granting exclusive marketing rights to original manufacturers for 12 years, (iv) increased drug rebates to the Medicaid program, and (v) disclosure requirements for financial relationships between various healthcare entities.

Within the U.S., the pharmaceutical industry has been a particular focus of both state and federal governments' reform efforts. Other than reform measures adopted in the Act, proposed reforms include, but are not limited to, the following:

- increasing regulation of pharmaceutical sales representatives;
- restricting direct to consumer advertising and off-label uses;
- limiting manufacturers' access to marketing data;
- authorizing the importation of drugs from Canada and other foreign countries to lower pharmaceutical costs to U.S. consumers;
- price discounts, formularies or rebates to government healthcare programs; and
- allowing government healthcare programs to negotiate prescription drug prices directly with manufacturers.

While the Fund cannot predict which legislative or regulatory proposals will be adopted or what affect the adopted proposals, including the Act, may have on the biopharmaceutical companies in which the Fund invests, the pendency, approval or implementation of such proposals could decrease the Fund's anticipated returns or adversely affect its investment opportunities.

Availability of Investment Capital

Many portfolio companies will require several rounds of capital infusions before reaching maturity. The Fund and its co-investors may not provide all necessary follow-on capital to portfolio companies. Accordingly, third-party sources of financing may be required. There is no assurance that such additional sources of financing will be available, or, if available, will be on terms beneficial to the Fund. Furthermore, the Fund's capital is limited and may not be adequate to protect the Fund from dilution resulting from multiple rounds of portfolio company financings. If the Fund does not have capital available to participate in subsequent rounds of financing, failure to participate may have a significant negative impact on the portfolio company as well as the value of the Fund's investment.

Economic and Market Risk

Companies in which the Fund invests may be sensitive to general downward swings in the overall economy or in the healthcare technology sector. Changes in economic conditions, including, for example, inflation rates, industry conditions, competition, technological developments, political and diplomatic events and trends, tax laws and innumerable other factors, none of which will be within the control of the General Partner, can affect substantially and adversely the business and prospects of the Fund. A major recession or adverse developments in the securities market might have an impact on some or all of the Fund's investments. In addition, factors specific to a portfolio company may have an adverse effect on the Fund's investment in such company. The General Partner may rely upon its own or a portfolio company's projections concerning the portfolio company's future performance in making investment decisions. Such projections are inherently subject to uncertainty and to

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certain factors beyond the control of the portfolio company and the General Partner. The economic environment for all companies, and in particular for healthcare technology and start-up companies, may remain challenging. Business risks may be more significant in portfolio companies embarking on a build-up or operating turnaround strategy and in smaller or development stage portfolio companies. All portfolio companies may face intense competition, changing business and economic conditions, risks of technological acceptance and obsolescence or other developments that may adversely affect their performance.

Illiquidity of Portfolio Investments
Investments by the Fund generally will be illiquid securities acquired through privately negotiated transactions. The Fund may be unable to realize its investment objectives by sale or other disposition at attractive prices or will otherwise be unable to complete an exit strategy. External factors beyond the General Partner's control, such as overall economic conditions, the competitive environment and the availability of potential acquirors of the Fund's interests in portfolio companies may shorten or lengthen the Fund's holding period in such portfolio companies. In some cases, the Fund may be prohibited by contract from selling such securities for a period of time or otherwise may be restricted from the disposition of such securities.

Lack of Operating History
The Fund and the General Partner are newly formed entities, and, accordingly have no operating history or investments upon which investors can evaluate the potential performance of the Fund. The prior performance of the Fund Managers or their investments as described in this Memorandum is not necessarily indicative of the Fund's future results. There can be no assurance that investments by the Fund will achieve returns comparable to the historical performance reflected in this Memorandum, and in any event, the returns achieved by the Fund will be subject to the Management Fee and the General Partner's carried interest. Any given investment made by the Fund may prove to be worthless, and there is a risk that investors could lose money.

No Assurance of Profit or Distributions
The Fund's task of identifying opportunities in private and public operating companies, managing such investments and realizing a significant return for investors is difficult. Many organizations operated by persons of competence and integrity have been unable to make, manage and realize such investments successfully. There is no assurance that the investments of the Fund will be profitable or that any distribution will be made to the Limited Partners. Any return on investment to the Limited Partners will depend upon successful investments being made by the Fund. The marketability and value of any such investment will depend upon many factors beyond the control of the Fund. The Fund may not have sufficient cash available to make tax distributions to the Partners. The expenses of the Fund may exceed its income, and the Limited Partners could lose the entire amount of their contributed capital. Accordingly, prospective investors should not subscribe to the Fund unless they can readily bear the consequences of such a loss.

Competition
The business of identifying, structuring and implementing venture capital investments, along with other investments within the strategy of NLV-III is highly competitive. The Fund will be competing for investments against other groups, including institutional investors, investment managers and industrial groups owned by large and well-capitalized investors. It is possible

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that competition for appropriate investment opportunities may limit significantly the number of opportunities available to the Fund and adversely affect the terms upon which investments can be made. There can be no assurance that the Fund will be successful in its efforts to identify attractive investment opportunities, and it is possible that the Fund's Commitments will not be fully utilized if sufficient attractive investments are not identified and consummated by the Fund during the Investment Period.

Management of the Fund
The General Partner will make decisions with respect to the management of the Fund. Limited Partners have no right or power to take part in the management of the Fund. The Limited Partners will not receive the detailed financial information issued by portfolio companies that will be available to the Fund. Accordingly, the Limited Partners will not have the opportunity to evaluate the relevant economic, financial and other information that will be utilized by the General Partner in its selection of investments. An investor in the Fund must rely upon the ability of the General Partner with the assistance of the Management Company to identify, structure, and implement investments consistent with the Fund's investment objectives and policies. Accordingly, no person should purchase Limited Partner Interests unless such person is willing to entrust all aspects of the management of the Fund to the General Partner.

Reliance on Management of Fund
The success of the Fund will be largely dependent upon the activities of the Fund Managers. The loss of one or more of these individuals could have a significant adverse impact on the business of the Fund and its financial performance.

Reliance Upon Portfolio Company Management
Although the Fund may seek representation on the board of directors of each of the portfolio companies or otherwise provide management and strategic planning assistance, the Fund will not have an active role in the day-to-day management of the companies in which it invests. To the extent that the senior management of a portfolio company performs poorly, or if a key manager of a portfolio company terminates employment, the Fund's investment in such company could be adversely affected.

Potential Conflicts of Interest
The Fund Managers will continue to devote a portion of their time to the business of the Sprout Funds, NLV-I, NLV-II and to any future funds that they may organize in accordance with the Partnership Agreement. Conflicts may arise in the allocation of investment opportunities and the Fund Managers' time among the Fund and other such partnerships and any such future funds. Prospective investors should be aware that there may be occasions when the General Partner, the Fund Managers, the Management Company and their affiliates will encounter potential conflicts of interest in connection with the Fund's activities. The Partnership Agreement will contain certain protections for Limited Partners against conflicts of interest faced by the General Partner and its partners, but will not purport to address all types of conflicts that may arise. Moreover, as a practical matter, it may be difficult for Limited Partners to subject the behavior of the General Partner, the Management Company and their partners to close scrutiny.

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Profits Not Shared in Proportion to Contributed Capital
The capital contribution of the General Partner will represent only a small portion of the Fund's capital. Limited Partners may invest greater amounts and may receive a proportionately smaller amount of the profits of the Fund than the General Partner. The General Partner may have an incentive to make investments that are riskier or more speculative than if the General Partner received allocations on a basis identical to that of the Limited Partners in the Fund or was compensated on a basis not tied to the performance of the Fund.

Investment Opportunities
The General Partner may in certain circumstances allocate investment opportunities to prior funds or potential successor funds. Allocation of investment opportunities will be made in good faith by the General Partner. There can be no assurance that the allocation of investment opportunities by the General Partner will not give rise to conflicts of interest between the investors of the respective funds.

Long-Term Investment
An investment in the Fund is a long-term commitment, and there is no assurance of any distribution to the Limited Partners prior to or upon liquidation of the Fund.

Illiquidity of Limited Partner Interests
The Limited Partner Interests are highly illiquid. There is no public market for the Limited Partner Interests and none is expected to develop. Limited Partner Interests in the Fund may not be assigned, transferred or encumbered without the prior written consent of the General Partner. Voluntary withdrawals of Limited Partner Interests are not permitted, except in limited circumstances where necessary to comply with laws or regulations applicable to a Limited Partner. Consequently, a Limited Partner may not be able to liquidate their investment in the event of a change in circumstances or for other reasons and, therefore, must be prepared to bear the risks of owning its interest in the Fund for an extended period of time. The Limited Partner Interests will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or under the various "Blue Sky" or securities laws of the state or jurisdiction of residence of any Limited Partner of the Fund. The Limited Partner Interests are being offered only to "accredited investors" under an exemption in Section 4(2) of the Securities Act and the rules of the Securities and Exchange Commission thereunder and exemptions under the various applicable "Blue Sky" and other state securities laws.

Bridge Financings and Guarantees
From time to time, the Fund may lend to portfolio companies on a short-term, unsecured basis or guaranty portfolio company obligations in anticipation of a future issuance of equity or long-term debt securities. Such bridge loans would typically be convertible into a more permanent, long-term security; however, for reasons not always in the Fund's control, such long-term securities may not issue and such bridge loans or guarantees may remain outstanding. In such event, the interest rate on such loans or compensation for such guaranty (if any) may not adequately reflect the risk associated with the unsecured position taken or guaranty given by the Fund.

Portfolio Company Leverage
To the extent that any investment is made in a portfolio company with a leveraged capital structure, such investment will be subject to increased exposure to adverse economic factors such as a significant rise in interest rates, a severe downturn in the economy or deterioration in the condition of such company or its industry. If such a company is unable to generate sufficient cash flow to meet principal and interest payments on its indebtedness, the value of any equity investment by the Fund in such company could be significantly reduced or even eliminated.

Investments in Public Companies
The Fund may invest in public companies or take private portfolio companies public. Investments in public companies may subject the Fund to risks that differ in type or degree from those involved with investments in privately held companies. Such risks include, without limitation, greater volatility in the valuation of such companies, increased obligations to disclose information regarding such companies, limitations on the ability of the Fund to dispose of securities at certain times (including due to the possession by the Fund of material non-public information), increased likelihood of shareholder litigation against such companies' board members, which may include the Fund Managers or other Management Company personnel, regulatory action by the U.S. Securities and Exchange Commission and increased costs associated with each of the aforementioned risks.

Hedging Techniques
From time to time, the Fund might have investments that are publicly traded, yet illiquid. The General Partner might engage in hedging techniques, such as selling the corresponding shares short "against the box," to "lock in" or secure the value in an investment until it becomes liquid and freely tradable. The Fund will only sell short a stock to the extent it holds a corresponding long and illiquid position in the same company.

Portfolio Trading
The Fund does not generally intend to trade its assets for short-term profits, however, when circumstances warrant, securities may be sold by the Fund without regard to the length of time held. Any active short-term trading of the Fund will increase its rate of turnover and related transaction expenses.

Non-U.S. Investments
The Fund may invest a portion of Fund's total committed capital in the securities of issuers that are organized outside of the U.S. and Canada. Investing in non-U.S. securities may involve substantially greater risks than investing in U.S. securities including risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar and the various foreign currencies in which the Fund's non-U.S. investments are denominated, and costs associated with conversion of investment principal and income from one currency to another; (ii) differences between the U.S. and non-U.S. securities markets, including potential price volatility in and relative illiquidity of some non-U.S. securities markets; (iii) the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements, and differences in government supervision and regulation; (iv) certain economic and political risks, including potential exchange control regulations, potential restrictions on foreign investments and repatriation of capital and the risks associated with political, economic or social instability, diplomatic developments, and the possibility of expropriation or

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confiscatory taxation; and (v) the possible imposition of non-U.S. taxes on income and gains recognized with respect to such securities. While the General Partner will take these factors into consideration in making investment decisions for the Fund and intends to manage the Fund in a manner to minimize exposure to the foregoing risks, there can be no assurance that the General Partner will be able to evaluate the risks accurately or that adverse developments with respect to such risks will not adversely affect the value or realization of investments that are held by the Fund in certain countries.

Reserves

As is customary in the industry, the General Partner may establish reserves for follow-on investments by the Fund in portfolio companies, operating expenses (including the Management Fee), Fund liabilities, and other matters. Estimating the appropriate amount of such reserves is difficult, especially for follow-on investment opportunities, which are directly tied to the success and capital needs of portfolio companies. Inadequate or excessive reserves could impair the investment returns to the Limited Partners. If reserves are inadequate, the Fund may be unable to take advantage of attractive follow-on or other investment opportunities or to protect its existing investments from dilutive or other punitive terms associated with "pay-to-play" or similar provisions. If reserves are excessive, the Fund may decline attractive investment opportunities or hold unnecessary amounts of capital in money market or similar low-yield accounts.

Diverse Investors

The Limited Partners may have conflicting investment, tax, and other interests with respect to their investments in the Fund. The conflicting interests of individual Limited Partners may relate to or arise from, among other things, the nature of investments made by the Fund, the structuring or the acquisition of investments and the timing of disposition of investments. As a consequence, conflicts of interest may arise in connection with decisions made by the Fund Managers, including with respect to the nature or structuring of investments that may be more beneficial for some Limited Partners than for others, particularly with respect to investors' individual tax situations. In selecting and structuring investments appropriate for the Fund, the General Partner will consider the investment and tax objective of the Fund and the Partners as a whole, not the investment, tax or other objective of any Limited Partner individually.

Failure of Limited Partners to Fulfill Their Commitment Obligations

The Fund's investments in portfolio companies will require capital calls on Limited Partners over an extended period of time. Failure by a Limited Partner to meet a capital call could result in the failure of the Fund to make desired investments, which could have adverse consequences for the Fund and thus all of the Limited Partners. The failure by the Fund to receive a significant portion of capital contributions due from Limited Partners in respect of their Commitments could materially impair the Fund's ability to realize its financial objectives. In the event that a Limited Partner defaults, such Limited Partner may be subject to various penalties, including forfeiture of all or a portion of its interest in the Fund, as provided in the Partnership Agreement.

Risk of Dilution

Limited Partners subscribing for interests at subsequent closings will participate in existing investments of the Fund, diluting the interest of existing Limited Partners therein. Although such Limited Partners will contribute their pro rata share of prior capital contributions

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previously drawn down by the Fund (plus an additional amount thereon), there can be no assurance that such payment will reflect the fair value of the Fund's existing investments at the time such additional Limited Partners subscribe for such interests.

Difficulty in Valuing Portfolio Investments and Distribution in Kind
Generally, there will be no readily available market for a substantial number of the Fund's investments and hence, most of the Fund's investments will be difficult to value. The securities in which the Fund will invest may be among the most junior in a portfolio company's capital structure, and thus subject to the greatest risk of loss. It is highly speculative as to the whether and when a portfolio company will be able to register its securities so that the securities become eligible for trading in public markets. Certain investments may be distributed in kind to the Partners of the Fund. An investor that receives assets other than cash from the Fund may incur costs and delays in converting those assets to cash.

Non-Controlling Investments
The Fund generally expects to make non-controlling investments in portfolio companies where the Fund may not be able to control or effectively influence the business or affairs of such entities. Portfolio companies in which the Fund's investments are made may have economic or business interests or goals which are inconsistent with those of the Fund, and the Fund may not be in a position to influence those interests or goals or otherwise protect the value of the Fund's investments in such entities. In addition, although the Fund may seek board representation in connection with its investments, there is no assurance that such representation, if sought, will be obtained.

Service on Board of Directors
The Fund typically will seek to have observation or visitation rights or the right to designate directors to serve on the boards of directors of the Fund's portfolio companies. In addition, affiliates of the General Partner may serve, from time to time, as officers or directors of the portfolio companies. The foregoing rights and activities could expose the General Partner, its affiliates and the assets of the Fund to regulatory action and/or lawsuits and claims by a portfolio company, its security holders and its creditors. While the General Partner intends to manage the Fund in a way that will minimize exposure to these risks, the possibility of successful claims or lawsuits or adverse regulatory action cannot be eliminated, and such events could have significant adverse effects on the Fund.

Material Non-Public Information
By reason of their responsibilities in connection with their other activities, certain affiliates of the General Partner may acquire confidential or material non-public information or be otherwise restricted from initiating transactions in certain securities. The Fund will not be free to act upon any such information. Due to these restrictions, the Fund may be not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it might otherwise might have sold.

In their capacity as officers or directors, affiliates of the General Partner will be subject to fiduciary or other duties to the portfolio company, which may adversely affect the Fund. For example, the Fund may be prohibited from selling publicly traded securities of a portfolio company if the General Partner or any of its affiliates is in possession of material non-public information relating to such company.

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Recourse to the Fund's Assets
The Fund's assets, including any investments made by the Fund and any funds held by the Fund, are available to satisfy all liabilities and other obligations of the Fund. If the Fund becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to the Fund's assets generally and will not be limited to any particular assets, such as the asset representing the investment giving rise to the liability. Accordingly, investors could find their interest in the Fund's assets adversely affected by a liability arising out of an investment of the Fund.

Contingent Liabilities on Disposition of Investments
In connection with the disposition of an investment in a portfolio company or otherwise, the Fund may be required to make representations about the business and financial affairs of the portfolio company typical of those made in connection with the sale of any business. The Fund may also be required to indemnify the purchasers of such portfolio company to the extent that any such representations turn out to be inaccurate. These arrangements may result in contingent liabilities, which might ultimately have to be funded by the investors to the extent of their Commitment to the Fund or previous distributions made to them.

Certain Litigation Risks
The Fund will be subject to a variety of litigation risks, particularly if one or more of its portfolio companies face financial or other difficulties during the term of the Fund. Legal disputes, involving any or all of the Fund, the General Partner, its partners or its affiliates, may arise from the Fund's activities and investments and could have a significant adverse effect on the Fund.

Indemnification
The Fund will be required to indemnify, among others, the General Partner, the general partner of the General Partner, the Management Company, the Fund Managers, their respective partners, members, employees, venture partners and affiliates, the Fund's other agents and members of the Advisory Board for liabilities incurred in connection with the affairs of the Fund. Such liabilities may be material. For example, in their capacity as directors of portfolio companies, the partners, managers, or affiliates of the General Partner may be subject to derivative or other similar claims brought by security holders of such companies. The indemnification obligations of the Fund would be payable from the assets of the Fund, including the unused capital commitments of the Partners. If the assets of the Fund are insufficient to pay such indemnification obligations, the Limited Partners may be required to return distributions previously made to them in order to satisfy such obligations.

Changes
The Fund's investment program is intended to extend over a period of years, during which the business, economic, political, regulatory, and technology environment within which the Fund operates may undergo substantial changes, some of which may be adverse to the Fund. The General Partner will have the exclusive right and authority (within limitations set forth in the Partnership Agreement) to determine the manner in which the Fund shall respond to such changes, and Limited Partners generally will have no right to withdraw from the Fund or to demand specific modifications to the Fund's operations in consequence thereof. A major recession or adverse developments in the securities or credit markets might have an impact on some or all of the Fund's investments. A sustained period of inactivity and/or low valuations

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in the public equity markets could result in substantially lower liquidation values and substantially longer periods before liquidity is achieved in comparison with historical values, which would reduce the returns that could be achieved by the Fund. In addition, factors specific to a portfolio company may have an adverse effect on the Fund's investment in such company. The General Partner may rely upon its own or a portfolio company's projections concerning the portfolio company's future performance in making investment decisions. Such projections are inherently subject to uncertainty and to certain factors beyond the control of the portfolio company and the General Partner. Prospective investors are particularly cautioned that the investment sourcing, selection, management and liquidation strategies and procedures exercised by partners of the General Partner in the past may not be successful, or even practicable, during the Fund's term.

Industry Specific Terminology

Prospective investors are cautioned that certain terms and phrases of common usage within the venture capital industry may be misleading to those unfamiliar with such usage. In particular, individuals who participate in the management of a fund often are referred to, in a colloquial sense, as "general partners" even though they are not actually general partners of any partnership. Prospective investors are reminded that the Fund will be a limited partnership, that the General Partner will be a limited partnership, that the general partner of the General Partner will be a limited liability company, and that the individuals directing the management of the Fund through the General Partner will be members of such limited liability company. It is not intended that the Fund will have any general partner other than the General Partner or that any actual general partnership will in any manner be associated with the formation, operation, dissolution or termination of the Fund. Prospective investors must not presume or rely upon the existence of any actual legal entities other than the Fund, the General Partner and the general partner of the General Partner. With respect to all matters involving industry specific terminology, prospective investors are urged to consult with their own legal and other advisors.

Fund and General Partner Not Registered

The Fund will not be registered under the Investment Company Act of 1940, as amended (the "Investment Company Act") pursuant to an exemption set forth in Sections 3(c)(1) and/or 3(c)(7) of the Investment Company Act. There is no assurance that such exemptions will continue to be available to the Fund. Due to the burdens of compliance with the Investment Company Act, the performance of the Fund's investment portfolio could be materially adversely affected, and risks involved in financing portfolio companies could substantially increase, if the Fund becomes subject to registration under the Investment Company Act. Neither the Fund nor its counsel can assure investors that, under certain conditions, changed circumstances, or changes in the law, the Fund may not become subject to the Investment Company Act or other burdensome regulation. The General Partner is not registered as a broker/dealer under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and with the National Association of Securities Dealers, Inc. (the "NASD") and is consequently not subject to the record keeping and specific business practice provisions of the Exchange Act and the rules of the NASD.

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Tax Risks
Certain tax risks relating to an investment in the Fund are discussed in Section XI "Certain Tax & ERISA Considerations", which prospective investors should read carefully. No assurances can be given that current tax laws, rulings and regulation will not be changed during the life of the Fund. Prospective Limited Partners should consult their tax advisors for further information about the tax consequences of purchasing a Limited Partner Interest in the Fund.

Withholding and Other Taxes
The General Partner intends to structure the Fund's investments in a manner that is intended to achieve the Fund's investment objectives and, notwithstanding anything contained herein to the contrary, there can be no assurance that the structure of any investment will be tax efficient for any particular investor or that any particular tax result will be achieved. In addition, tax reporting requirements may be imposed on investors under the laws of the jurisdictions in which investors are liable to taxation or in which the Fund makes portfolio investments. Prospective investors should consult their own professional advisors with respect to the tax consequences to them of an investment in the Fund under the laws of the jurisdiction in which they are liable to taxation. Furthermore, the Fund's returns in respect of its investments may be reduced by withholding or other taxes imposed by jurisdictions in which the Fund's portfolio companies are organized.

Confidential Information
The Partnership Agreement will contain confidentiality provisions intended to protect proprietary and other information relating to the Fund and the Fund's portfolio companies. To the extent that such information is publicly disclosed, competitors of the Fund and/or competitors of its portfolio companies, and others, may benefit from such information, thereby adversely affecting the Fund, its portfolio companies and the General Partner and the economic interests of Limited Partners.

Written Agreements
The Fund, the General Partner and the Management Company will be authorized, without the approval of any Limited Partner, to enter into side letters or similar written agreements with Limited Partners that have the effect of establishing rights under, or altering or supplementing the terms of this Memorandum, the Partnership Agreement, such Limited Partner's Subscription Agreement or other related agreements. The ability of other Limited Partners to receive copies of and/or elect to receive the benefit of such side agreements will be limited.

Market volatility
Since 2008, the capital, credit and securities markets have been experiencing unprecedented levels of volatility and disruption. Ongoing volatility could negatively impact the Fund in a number of ways. Many of the investments purchased, held and sold on behalf of the Fund may be complex, and their market values will be highly sensitive to market changes. Overall Fund returns may be reduced as relatively small changes in the capital, credit or securities markets may have significant impacts on the profitability of Fund investments. In addition, the U.S. Congress and regulatory agencies may adopt new financial regulations and tax policies in response to continued volatility, which could restrict the Fund's investment options and be otherwise unfavorable to the Fund.

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Regulatory Changes
On June 22, 2011, to implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the U.S. Securities and Exchange Commission (the "SEC") adopted final rules implementing new exemptions from the registration requirements of the Investment Advisers Act of 1940 (the "***Advisers Act***"), one of which is commonly known as the venture capital fund exemption. Neither the General Partner nor the Management Company is currently expected to register as an investment adviser with the SEC in reliance on the venture capital fund exemption. The General Partner may need to take into consideration certain conditions regarding the nature of investments that may be made by investment vehicles advised by an investment adviser relying on the venture capital exemption, which may constrain the Fund's investment flexibility or require certain non-qualifying investments to be disposed of earlier than they might otherwise be. In addition, compliance with the venture capital fund exemption may subject the Fund to limitations on the Fund's operations, including limitations on the Fund's ability to borrow, provide guarantees and make short-term investments that are more restrictive than any limitation set forth in the Partnership Agreement.

Reliance on the venture capital exemption also will necessitate reporting certain information to the SEC about the Management Company, the General Partner and their affiliates and may result in such entities being subject to SEC examination authority and certain Advisers Act compliance obligations. If the General Partner and the Management Company are able to rely on the venture capital exemption, investors in the Fund will not be entitled to the benefits of certain protections under the Advisers Act. If the General Partner or the Management Company cannot rely on the venture capital exemption, the General Partner or the Management Company may need to register as an investment adviser under the Advisers Act. Registration under, and compliance with, the Advisers Act could be costly and could divert attention of the Fund's management team. There also can be no assurance that statutory, regulatory, judicial or administrative interpretations of existing laws and regulations will not in the future impose more comprehensive or stringent requirements on the General Partner or the Management Company.

Cautionary Statements Regarding Forward-Looking Statements. Certain information contained in this Memorandum constitutes "forward-looking statements," which can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "anticipate," "project," "estimate," "intend," "continue," or "believe," or the negatives thereof or other variations thereon or comparable terminology. Such forward-looking statements, including the intended actions and performance objectives for the Fund, involve known and unknown risks, uncertainties and other important factors that could cause actual results, performance or achievements of the Fund to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Although this information was prepared by the General Partner based on its experience in the industry and on assumptions of fact and opinion as to future events that the General Partner believed to be reasonable when made, no representation is made or assurance given that such statements, views, projections or forecasts are correct or that the objectives of the Fund will be achieved or that investors will receive a return of their capital. Moreover, neither the Fund nor the General Partner, nor any of their affiliates, assumes responsibility for the accuracy and completeness of any forward-looking statements. All forward-looking statements in this Memorandum speak only as of the date of this Memorandum. The Fund, the General Partner and their affiliates expressly disclaim any obligation or undertaking to disseminate any updates

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or revisions to any forward-looking statement contained herein to reflect any change in its expectation with regard thereto or any change in events, conditions or circumstances on which any such statement is based. Due to various risks and uncertainties, actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements. Limited Partners are cautioned not to place undue reliance on such statements.

THE FOREGOING LIST OF RISK FACTORS AND CONFLICTS OF INTEREST DOES NOT PURPORT TO BE A COMPLETE EXPLANATION OF THE RISKS INVOLVED IN THIS OFFERING. PROSPECTIVE INVESTORS ARE URGED TO READ THIS ENTIRE MEMORANDUM BEFORE DETERMINING TO INVEST IN THE FUND.

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X. CERTAIN TAX AND ERISA CONSIDERATIONS

IN ACCORDANCE WITH U.S. TREASURY REGULATIONS GOVERNING PRACTICE BEFORE THE INTERNAL REVENUE SERVICE (CIRCULAR 230), LEGAL COUNSEL TO THE FUND HEREBY INFORMS INVESTORS THAT (A) THE INFORMATION BELOW (OR OTHERWISE CONTAINED IN THIS DOCUMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY THE INVESTORS FOR THE PURPOSE OF AVOIDING PENALTIES THAT THE INTERNAL REVENUE SERVICE (THE "IRS") MAY ATTEMPT TO IMPOSE ON AN INVESTOR, (B) THE INFORMATION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTION OR MATTERS ADDRESSED BY THE WRITTEN INFORMATION, AND (C) INVESTORS SHOULD SEEK TAX ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a brief summary of certain U.S. federal income tax considerations that may be relevant to an investment in the Fund. This summary does not contain a comprehensive discussion of all U.S. federal income tax consequences that may be relevant to a Partner in view of that Partner's particular circumstances or (unless otherwise indicated) to certain Partners subject to special treatment under U.S. federal income tax laws — such as regulated investment companies, personal holding companies, brokers or dealers in securities, banks and certain other financial institutions, tax-exempt organizations, trusts, and insurance companies — nor does it address any state, estate, local, foreign, or other tax consequences of an investment in the Fund, except as otherwise provided herein. This summary is based on the assumptions that (i) each Partner (and each of its beneficial owners, as necessary under U.S. federal income tax withholding and backup withholding rules) will provide all appropriate certifications to the Fund in a timely fashion to minimize withholding (or backup withholding) on each Partner's distributive share of the Fund's gross income and (ii) each Partner will hold its Limited Partner Interest in the Fund as a capital asset for U.S. federal income tax purposes. Each prospective investor should also note that, except as otherwise provided herein, this summary does not address the interaction of U.S. federal tax laws and any income or estate tax treaties between the U.S. and any other jurisdiction.

No assurance can be given that the IRS will concur with the tax consequences set forth below. Each prospective investor is advised to consult its own tax counsel as to the specific U.S. federal income tax consequences of an investment in the Fund and as to applicable foreign, state, estate, and local taxes.

General Matters

Classification of the Fund - Pursuant to applicable U.S. Treasury Regulations, the Fund will be treated as a partnership, rather than a corporation, for U.S. federal income tax purposes unless the Fund affirmatively elects to be treated as a corporation for such purposes. The General Partner has no intention of making such an election on behalf of the Fund and does not anticipate any circumstances under which such an election would be made. In certain cases under Section 7704 of the Internal Revenue Code of 1986, as amended (the "Code"), a partnership that is classified as a "publicly traded partnership" may be taxed as a corporation

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for U.S. federal income tax purposes. The following discussion is based on the assumption that the Fund will not be treated as a "publicly traded partnership."

Treatment of U.S. Partners and Non-U.S. Partners - The discussion below addresses separately certain U.S. federal income tax matters relevant to U.S. Partners and Non-U.S. Partners. For purposes of this discussion, the term "U.S. person" generally means any U.S. citizen or resident individual, any corporation, limited liability company, or partnership organized under U.S. law, any estate (other than an estate the income of which, from sources outside the U.S. that is not effectively connected with a trade or business within the U.S., is not includible in its gross income for U.S. federal income tax purposes), and any trust if a court within the U.S. is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust. The term "U.S. Partner" means any partner that is a U.S. person and, unless the context otherwise requires, includes any U.S. person that holds an equity interest in the Fund through one or more partnerships or other entities treated as transparent for U.S. federal income tax purposes. The term "Non-U.S. Partner" means a Partner that is not a U.S. person.

Taxation of Fund Operations Generally - As a partnership, the Fund will not pay U.S. federal income taxes, but each U.S. Partner will be required to report that Partner's distributive share (whether or not distributed) of the Fund's income, gains, losses, deductions and credits of the character specified in Section 702 of the Code. It is possible that the U.S. Partners could incur U.S. federal income tax liabilities without receiving from the Fund sufficient distributions to defray such tax liabilities. The Fund's taxable year will be the calendar year, or such other period as required by the Code. Tax information will be delivered to all Partners on an annual basis to enable the Partners to complete their tax returns.

Election to Adjust Basis of Fund Assets - Under the principal agreements relating to the Fund and Section 754 of the Code, the General Partner will have the authority to elect to adjust the basis of the Fund's assets (commonly referred to as "Section 754 adjustments") in connection with certain distributions made by the Fund to Partners or certain transfers of Limited Partner Interests in the Fund. Although the General Partner has no present intention of making an election on behalf of the Fund under Section 754 of the Code, Section 754 adjustments may nevertheless be mandatory under certain circumstances and could affect the amount of a Partner's allocations (for U.S. federal income tax purposes) of gain or loss recognized by the Fund on a disposition of its assets.

The General Partner also will have the authority under the principal agreements relating to the Fund to elect to treat the Fund as an "electing investment partnership" and, as a result, potentially avoid making Section 754 adjustments that otherwise would be mandatory with respect to certain transfers of Limited Partner Interests in the Fund. Such election, however, may result in the disallowance (for U.S. federal income tax purposes) of certain losses allocated by the Fund to transferees of Limited Partner Interests in the Fund. It is possible, however, that the Fund will not be able to qualify as an electing investment partnership.

The General Partner will have the authority to require any Partner engaging in a transaction that requires a Section 754 adjustment (for example, a transfer of the Partner's Limited Partner Interest) to bear the ongoing administrative and other costs incurred by the Fund or its Partners in connection with these basis adjustment rules. These costs, which could be significant, may be

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charged to a Partner without regard to whether the General Partner made either of the elections described above on behalf of the Fund. Furthermore, each Partner will be required to provide the Fund with any information necessary to allow the Fund to comply with its obligations to make Section 754 adjustments and/or its obligations as an electing investment partnership.

Tax-Exempt U.S. Partners

Unrelated Business Taxable Income - Under the terms of the principal agreements relating to the Fund, the General Partner will be required to use reasonable best efforts to conduct the affairs of the Fund in a manner that does not cause any tax-exempt U.S. Partner to recognize any "unrelated business taxable income" within the meaning of Section 512 of the Code; provided, however, that the General Partner may cause the Fund to borrow on a short-term basis and may guarantee the indebtedness of any portfolio company. The General Partner's undertaking will be deemed satisfied with respect to the making, holding or disposing of any portfolio investment if the tax-exempt U.S. Partners are given the opportunity to (or if all Limited Partners are otherwise required to) hold their proportionate shares of such portfolio investment directly or indirectly through an alternative investment vehicle treated as a corporation for U.S. federal income tax purposes. Notwithstanding this undertaking, it is possible that the Fund could realize income which would constitute unrelated business taxable income, and in that event each tax-exempt U.S. Partner would be subject to U.S. federal income tax on its share of such income and may be required to file a U.S. federal income tax return with respect to such income.

Taxable U.S. Partners

Limitations on Allowable Deductions - Under Section 67 of the Code, U.S. taxpayers who are individuals may deduct certain miscellaneous expenses (e.g., investment advisory fees, tax preparation fees, and unreimbursed employee expenses such as the cost of subscriptions to professional journals) only to the extent that these deductions exceed, in the aggregate, 2% of the taxpayer's adjusted gross income. Further, Section 68 of the Code disallows certain deductions otherwise allowable to taxpayers who are individuals; the amount disallowed varies based on the taxpayer's adjusted gross income. Part or all of the Fund's expenses allocated to any U.S. Partner who is an individual (including that Partner's share of the management fee payable to the Fund's Management Company) may be disallowed under these provisions, although tax-exempt U.S. Partners will generally not be affected. Finally, certain expenses (including the fees and expenses of placement agents, if any) incurred in connection with the offer and sale of the Limited Partner Interests are not deductible by any U.S. Partner. If the Management Company or an affiliate pays the fees or expenses of any placement agent, a corresponding portion of the Fund's expenses attributable to payments or accruals of the management fee is likely to constitute a nondeductible syndication expense.

Surtax on Unearned Income - Section 1411 of the Code generally imposes a 3.8% surtax on the "net investment income" of certain U.S. Partners who are citizens or resident aliens, and on the undistributed "net investment income" of certain U.S. estates and trusts. Among other items, "net investment income" generally would include a U.S. Partner's allocable share of the Fund's net gains and certain other income such as interest and dividends, less deductions allocable to such income. In addition, "net investment income" may include gain from the sale, exchange or other taxable disposition of an interest in the Fund, less certain deductions. U.S. Partners

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potentially subject to the surtax should consult their own advisors concerning its potential applicability to their individual circumstances.

Passive Foreign Investment Companies - A portfolio investment by the Fund in a non-U.S. corporation that is classified as a "passive foreign investment company" ("PFIC") will cause taxable U.S. Partners to be subject to taxation under Sections 1291 through 1298 of the Code. In general, a non-U.S. corporation will be classified as a PFIC if 75% or more of its gross income constitutes "passive income" — generally, interest, dividends, royalties, rent and similar income, and gains on the disposition of assets that generate such income — or 50% or more of its assets (by value or, in certain situations, by adjusted tax bases) produce passive income or are held for the production of such income. Under the PFIC rules, gain attributable to a disposition of PFIC stock, as well as income attributable to certain "excess distributions" with respect to that PFIC stock, is allocated ratably over the shareholder's holding period for the stock. Gain allocated under this rule to (i) the year in which the shareholder disposes of the PFIC stock and (ii) any year prior to the time the foreign corporation first satisfied the PFIC income or assets test, as well as income attributable to any excess distribution on PFIC stock allocated to those years, is subject to tax (as ordinary income) at the U.S. federal income tax rates applicable to the shareholder for the year in which the disposition occurs. Disposition gain attributable to years included in the shareholder's holding period — other than those described in the preceding clauses (i) and (ii) — and income attributable to excess distributions allocated to each such other year is subject to tax (as ordinary income) at the maximum U.S. federal income tax rate applicable to the shareholder for the year in which the income is treated as realized, and also to an interest-like charge on the shareholder's "deferred" payment of this tax liability that accrues generally from the year of deemed realization through the due date of the shareholder's U.S. federal income tax return for the year of disposition or distribution (determined without regard to extensions). A U.S. Partner effectively will be treated as a U.S. shareholder with respect to its proportionate share of any PFIC stock owned by the Fund. If, however, that PFIC is also a "controlled foreign corporation" in which the Fund is a "United States Shareholder" (as defined below), the PFIC rules generally will be superseded by the rules discussed below dealing with controlled foreign corporations. The PFIC rules generally should not affect tax-exempt U.S. Partners.

The PFIC rules are highly technical and it is possible that a non-U.S. corporation in which the Fund makes an investment will be classified as a PFIC. If the Fund invests in the stock of a portfolio company classified as a PFIC, and that company agrees to provide the Fund and, if necessary, the IRS with certain financial information, the Fund may elect to treat that company as a "qualified electing fund" ("QEF"). If the Fund holds stock of a non-U.S. corporation with respect to which a QEF election has been made for the first taxable year in the Fund's holding period for which the non U.S. corporation is a PFIC, each U.S. Partner will be subject to tax currently on its proportionate share of certain earnings and net capital gain of that non-U.S. corporation — regardless of whether that corporation actually distributes cash or other property to the Fund — but generally will not be subject to the tax regime described in the preceding paragraph with respect to its investment in that corporation. Although the maximum rate of tax imposed on certain dividends is currently 20%, this rate does not apply to dividends paid or deemed paid by PFICs. A QEF election generally will not result in current inclusion of the PFIC's earnings for any year in which the PFIC has no net ordinary earnings and no net capital gain. Alternatively, if such PFIC stock is publicly traded, the Fund may be eligible to value the

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stock annually on a "mark-to-market" basis so that the Fund may treat any resulting gain or loss as ordinary income or loss to avoid the PFIC tax.

As noted above, the PFIC rules (including the rules pertaining to QEF elections) generally should not affect tax-exempt U.S. Partners.

The Fund cannot predict with any certainty at this time whether any non-U.S. portfolio company in which the Fund invests may be subject to the PFIC regime, whether a timely QEF election can or will be made, or the effect or availability of any applicable elections made by the Fund. The rules applicable to PFICs are complex, and the foregoing summary of U.S. federal income taxation of U.S. Partners indirectly owning an interest in a PFIC is general in nature. It is possible that U.S. Partners may be subject to tax currently under the PFIC regime on their proportionate shares of certain earnings of a non-U.S. corporation in which the Fund holds an interest and/or may incur nondeductible interest-like charges on tax liability deferred under the PFIC regime without receiving from the Fund distributions sufficient to satisfy any such obligations.

In addition to the PFIC rules discussed above, a U.S. person that is a shareholder of a PFIC may be required to file an annual information report and/or applicable tax forms with the IRS.

Controlled Foreign Corporations - Under Sections 951 through 957 of the Code, special rules apply to U.S. persons who own, directly or indirectly and applying certain attribution rules, 10% or more of the total combined voting power of all classes of stock of a non-U.S. corporation (each, a "United States Shareholder") that is a "controlled foreign corporation" ("CFC"). For this purpose, the Fund will be treated as a United States Shareholder of any foreign corporation in which the Fund's share ownership reaches this 10% threshold. A non-U.S. corporation generally will be a CFC for a taxable year if United States Shareholders collectively own more than 50% of the total combined voting power or total value of the corporation's stock on any day during such taxable year. United States Shareholders of a CFC generally must include in their gross income for U.S. federal income tax purposes their pro rata shares of certain earnings and profits of the CFC. Further, under Section 1248 of the Code, if a U.S. person sells or exchanges stock of a non-U.S. corporation and that person is or was a United States Shareholder at any time during the five-year period ending on the date of such sale or exchange during which that non-U.S. corporation was a CFC, that U.S. person generally will be required to treat a portion of the gain recognized upon such sale or exchange as a dividend to the extent of the earnings and profits of the CFC attributable to such stock. Under U.S. federal income tax rules, the Fund itself is a U.S. person and, if the Fund becomes a United States Shareholder of a CFC, taxable U.S. Partners (i) will be required to report and pay tax currently on their shares of the CFC's earnings and profits attributable to the Fund that are taxable to its United States Shareholders under the CFC rules, and (ii) will be subject to the Section 1248 recharacterization rule described above. In addition, if the Fund is a United States Shareholder of a CFC and a U.S. Partner disposes of its Limited Partner Interest, that Partner generally will recognize income under Section 751 of the Code equal to its distributive share of the Section 1248 income that would have been triggered if the Fund had sold its interest in the CFC at fair market value. The maximum rate of tax imposed on certain dividend income and certain long-term capital gains attributable to dispositions of securities generally is 20%, so that a recharacterization of gain under Section 1248 might not increase that U.S. Partner's U.S. federal income tax liability. In addition, income of a CFC subject to income tax in a country other than the U.S. at an

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effective rate greater than 90% of the maximum U.S. corporate income tax rate is not taxable to a United States Shareholder under the CFC rules if the United States Shareholder so elects.

The rules applicable to CFCs are complex, and the foregoing summary of the U.S. federal income taxation of U.S. Partners indirectly owning an interest in a CFC is general in nature. The General Partner cannot provide any assurance that the Fund's portfolio companies will not be CFCs. The CFC rules, however, generally should not affect tax-exempt U.S. Partners.

U.S. Foreign Tax Credits - The Fund may make investments in entities that are formed and operating under the laws of countries other than the United States. The countries in which these entities are organized and operate may impose taxes on the income of, and distributions or other payments made by, these entities. In addition, the Fund and/or the Partners may be required to file tax or information returns in such non-U.S. jurisdictions. U.S. Partners may be entitled, under certain circumstances, to a reduced rate of non-U.S. tax on their shares of such income or distributions under tax treaties between the United States and the non-U.S. jurisdictions imposing such tax, or may, in certain circumstances, be entitled under such treaties to file tax returns in such jurisdictions and claim refunds of any amounts of non-U.S. tax over-withheld.

Subject to applicable limitations on foreign tax credits, a U.S. Partner that is subject to U.S. federal income taxation generally should be entitled to elect to treat foreign taxes withheld from such Partner's share of the Fund's dividend and interest income as foreign income taxes eligible for credit against such Partner's U.S. federal income tax liability. Similarly, each U.S. Partner's share of any foreign taxes which may be imposed on capital gains or other income realized by the Fund generally should be treated as creditable foreign income taxes. Capital gains realized by the Fund, however, may be considered to be from sources within the U.S., which may effectively limit the amount of foreign tax credit allowed to the U.S. Partner. Other complex tax rules may also limit the availability or use of foreign tax credits, depending on each U.S. Partner's particular circumstances. Because of these limitations, U.S. Partners may be unable to claim a credit for the full amount of their proportionate shares of any foreign taxes paid by the Fund. U.S. Partners that do not elect to treat their shares of foreign taxes as creditable generally may claim a deduction against U.S. taxable income for such taxes (subject to applicable limitations on losses and deductions). Foreign tax credits or deductions generally will not provide any benefit to tax-exempt U.S. Partners unless such Partners' distributive shares of the income or gains on which the related foreign income taxes are imposed constitute "unrelated business taxable income" and certain other conditions are satisfied. However, since the availability of a credit or deduction depends on the particular circumstances of each U.S. Partner, Partners are advised to consult their own tax advisors.

Foreign Currency Issues - A U.S. Partner's distributive share of profits or losses realized by the Fund on the conversion of U.S. dollars into non-U.S. currency, or of non-U.S. currency into U.S. dollars, generally will be treated as ordinary income or loss rather than capital gain or loss. Further, if the Fund acquires, or becomes the obligor under, a debt instrument or enters into certain other transactions, any of which is denominated in terms of a currency other than the U.S. dollar, fluctuations in the value of that currency relative to the U.S. dollar generally will result in foreign currency gain or loss realized by the Fund and will be included in the U.S. Partners' distributive shares of Fund profits or losses as U.S.-source ordinary income or loss rather than capital gain or loss.

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U.S. Reporting by U.S. Partners That Are Owners of Non-U.S. Entities - U.S. tax rules impose information reporting requirements on U.S. persons that own, either directly or indirectly under stock attribution rules, more than certain threshold amounts of stock in a foreign corporation; these persons must disclose, among other things, various transactions between themselves and those foreign corporations. For purposes of these information reporting requirements, stock ownership is determined with regard to certain stock attribution rules, and each U.S. Partner is treated as owning part or all of the stock owned directly or indirectly by the Fund. Similar reporting requirements apply to United States persons that (i) own, directly or indirectly, more than certain threshold amounts of certain foreign financial assets including, but not limited to stocks, securities and partnership interests in non-U.S. entities or (ii) contribute, in their capacity as Partners, more than a certain threshold amount to a non-U.S. partnership during a 12-month period. In certain circumstances, these rules may require U.S. Partners to file reports annually. U.S. Partners generally will be responsible for satisfying these information reporting requirements.

Non-U.S. Partners

U.S. Trade or Business Issues - Under the terms of the principal agreements relating to the Fund, the General Partner will be required to use commercially reasonable efforts to conduct the affairs of the Fund in a manner that limits the Fund's operations to investing and other related activities which, in the aggregate, would not cause the Fund to be treated as engaged in the conduct of a trade or business in the U.S. The General Partner's undertaking will be deemed satisfied with respect to the making, holding or disposing of any portfolio investment if the Non-U.S. Partners are given the opportunity to (or if all Limited Partners are otherwise required to) hold their proportionate shares of such portfolio investment directly or indirectly through an alternative investment vehicle treated as a corporation for U.S. federal income tax purposes. Notwithstanding this undertaking, it is possible that the activities of the Fund and the contractual arrangements into which it enters could cause the Fund to be treated as engaged in the conduct of a trade or business in the U.S.

Provided that the Fund is not engaged in the conduct of a U.S. trade or business, the U.S. federal income tax liability of a Non-U.S. Partner with respect to that Partner's Limited Partner Interest generally will be limited to withholding tax on certain gross income from U.S. sources generated by the Fund as long as the Non-U.S. Partner undertakes no activities in the U.S. (determined without regard to its investment in the Fund) that would cause that Partner to be engaged in the conduct of a U.S. trade or business, and, unless otherwise indicated, the following discussion of the U.S. federal income tax treatment of Non-U.S. Partners is based on that assumption.

Further, if the Fund withholds and remits the proper amounts to the U.S. government, Non-U.S. Partners that are individuals or corporations will not be required to file U.S. federal income tax returns or pay additional U.S. federal income taxes solely as a result of their investment in the Fund (though Non-U.S. Partners treated as trusts for U.S. federal income tax purposes are subject to special rules). If the Fund is not engaged in the conduct of a U.S. trade or business, Non-U.S. Partners' shares of income and gains from sources other than the U.S. (e.g., interest or dividends paid by non-U.S. portfolio companies and gains realized on the disposition of securities of those companies) will not be subject to U.S. federal income tax.

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If it were ultimately established that the Fund is engaged in a U.S. trade or business, the Fund generally would be required to withhold and remit to the U.S. government a percentage of the Fund's net income and gains that are both effectively connected with that trade or business and allocated to Non-U.S. Partners, and would be liable for interest and penalties with respect to amounts which were not so withheld. The relevant withholding percentage is the maximum U.S. federal income tax rate for individuals or corporations, as applicable. In addition, Non-U.S. Partners generally would be required to file U.S. federal income tax returns and pay tax in respect of their shares of the Fund's effectively connected income including capital gains, but would be allowed a credit against U.S. federal income tax liability for amounts withheld by the Fund on their behalf. Non-U.S. Partners which are non-U.S. corporations might also be subject to a "branch profits" tax on certain earnings of the Fund deemed to have been repatriated to those Partners.

Treatment of Interest and Dividends from U.S. Sources - Certain categories of investment income from U.S. sources realized by the Fund, such as dividends and interest, generally will be subject to U.S. income tax withholding, at a 30% rate on the gross amount of that income, when included in the distributive shares of Non-U.S. Partners. A Non-U.S. Partner whose distributive share of such income is subject to U.S. withholding tax may be able to claim an exemption or a reduced rate of withholding under a tax treaty or convention between the U.S. and that Partner's country of residence by providing appropriate documentation regarding that Partner's residence for tax purposes and its satisfaction of any conditions imposed by the treaty. A Non-U.S. Partner resident in a jurisdiction with which the U.S. has a tax treaty, however, will not be entitled to the benefits of that treaty with respect to that Non-U.S. Partner's distributive share of the Fund's income and gains unless the Fund is treated as fiscally transparent under the law of that non-U.S. jurisdiction and certain other conditions are satisfied. Finally, in order to claim the benefits of a tax treaty to reduce U.S. withholding tax on U.S.-source interest and dividends paid by corporations that are not actively traded, a Non-U.S. Partner — and any direct or indirect equity owner of a Non-U.S. Partner seeking treaty benefits for itself because the Non-U.S. Partner is considered fiscally transparent in that equity owner's jurisdiction — generally will be required to obtain a U.S. taxpayer identification number from the IRS and may be required to provide that number and certain other documentation to the Fund. Other exemptions may be available for certain types of interest income.

Treatment of the Fund's Capital Gains from U.S. Sources - Under current U.S. law, in general, capital gains attributable to sales by the Fund of the securities of U.S. corporations will not be subject to U.S. federal income taxation or tax withholding when allocated to a Non-U.S. Partner unless that Partner is an individual who is present in the U.S. for 183 days or more during the taxable year in which such gains are realized and certain other conditions are satisfied.

This general rule does not apply to gains attributable to a U.S. trade or business or gains attributable to dispositions of securities of any "United States real property holding corporation" ("USRPHC"), defined in Section 897 of the Code as, in general, a company with 50% or more of the fair market value of its business assets consisting of interests in U.S. real estate and related assets. Capital gains attributable to sales by the Fund of the securities of a U.S. corporation that is a USRPHC (other than debt securities with no equity component) may be subject to U.S. income tax, collected initially by withholding, to the extent allocated to any Non-U.S. Partner. Non-U.S. Partners would also be required to file U.S. federal income tax

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returns, and might be liable for U.S. tax in excess of the amount collected by withholding. Similarly, Non-U.S. Partners could become subject to U.S. federal income tax and tax return filing obligations, as a result of transfers of their Limited Partner Interests at a time when the Fund owned stock of any U.S. corporation that is a USRPHC, although certain exceptions may apply. Even if a company in which the Fund invests is not a USRPHC at the time of such investment, such company subsequently may become a USRPHC.

Currency Conversion Issues - Non-U.S. Partners (like other Partners) will be required to make their capital contributions to the Fund in U.S. dollars, and any cash distributions made by the Fund will be made in U.S. dollars. Profits or losses realized by Non-U.S. Partners on the conversion of other currencies into U.S. dollars, or of U.S. dollars into other currencies, will neither be reflected in the capital accounts of the Partners nor affect the amounts distributable by the Fund to its Non-U.S. Partners.

Withholding on Payments to Certain Foreign Entities - Sections 1471 through 1474 of the Code would generally impose a withholding tax of 30% on certain gross amounts of income not effectively connected with a U.S. trade or business paid to certain foreign entities, unless certain requirements are satisfied. Amounts subject to withholding tax under these rules generally include gross U.S.-source dividend and interest income paid on or after July 1, 2014, as well as gross proceeds from the sale of property that produces U.S.-source dividend or interest income paid on or after January 1, 2017. To avoid withholding under these rules, Non-U.S. Partners that are subject to these rules will generally be obligated to comply with certain information reporting and disclosure requirements, including, in certain cases, entering into an agreement with the IRS. Non-U.S. Partners are encouraged to consult their own tax advisors regarding the possible application of Sections 1471 through 1474 of the Code to their investment in the Fund.

Other Tax Matters

Certain State and Local Tax Consequences - State and local taxing jurisdictions may impose income taxes and estate, inheritance and intangible property taxes on income from, or an investment in, the Fund. These tax laws may differ substantially from the U.S. federal tax laws. As a result of participating in the Fund, a Partner may be required to file tax returns with, and pay taxes to, any state or local jurisdiction in which the Fund does business (or is deemed to do business from investing a portion of its commitments in operating businesses treated as tax transparent for U.S. federal income tax purposes). A Partner's distributive share of the Fund's taxable income, gain, loss, deduction and credit is normally included in the income reported to the state and local jurisdiction(s) in which the Partner is a resident or does business. Investors should consult their own tax advisors about state and local taxes.

Basis for Description of Tax Consequences - The description of U.S. tax consequences set forth above is based on the provisions of the principal agreements relating to the Fund that the General Partner expects will be adopted, existing provisions of the Code, existing and proposed U.S. Treasury Regulations, existing administrative interpretations and court decisions, and certain assumptions. Future legislation, U.S. Treasury Regulations, administrative interpretations or court decisions could significantly change these authorities. Any such change could have retroactive application and therefore could apply to transactions that have taken place before such change occurs. In addition, some of the issues discussed above have not been addressed by administrative authorities or resolved by the courts. Accordingly, no assurance

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can be given that the IRS will agree with the description of the U.S. federal income tax consequences described above. No rulings have been or will be requested from the IRS. Furthermore, any changes in the principal agreements relating to the Fund or the operations of the Fund could affect the tax consequences described above.

Consultation with Tax Advisors - The description of U.S. tax matters set forth above is not intended as a substitute for careful tax planning. It does not address all of the U.S. federal income tax consequences to investors in the Fund, and does not address any of the foreign, state, local, estate or other tax consequences of such investment to any investor, except as otherwise specifically provided. Each prospective investor in the Fund is solely responsible for all tax consequences to that person or entity of an investment in the Fund. Each prospective investor is advised to consult its own tax counsel as to the U.S. federal income tax consequences attributable to acquiring, holding and disposing of an Limited Partner Interest and as to applicable foreign, state, local, estate or other taxes. The effect of existing U.S. income tax laws and treaties, the tax laws of other jurisdictions to which an investor may be subject, and possible changes in such laws and treaties (including proposed changes which have not yet been adopted) will vary with the particular circumstances of each investor.

CERTAIN ERISA CONSIDERATIONS

ERISA governs the investment of assets of ERISA Plans that may be investors, directly or indirectly, in the Fund. ERISA, the regulations under ERISA issued by the United States Department of Labor (the "DOL") and opinions and other authority issued by the DOL and the courts provide guidance that should be considered by fiduciaries of ERISA Plans prior to investing in the Fund.

The following discussion of certain ERISA considerations is based on statutory authority and judicial and administrative interpretations as of the date hereof and is designed only to provide a general understanding of the basic issues. Accordingly, this discussion should not be considered legal advice and the trustees and other fiduciaries of each ERISA Plan are encouraged to consult their own legal advisors on these matters.

Fiduciary Duty of Investing Plans

A fiduciary considering investing assets of an Employee Plan ("plan assets") in the Fund should consult its legal adviser before making such an investment. Before authorizing an investment in the Fund, any such fiduciary should, after considering the Employee Plan's particular circumstances, be satisfied that the investment of such plan assets in the Fund is appropriate under the fiduciary standards of ERISA, including standards with respect to prudence, diversification and compliance with the governing documents of the Employee Plan and its related trust and the prohibited transaction provisions of ERISA and the Code.

Plan Assets

ERISA and the regulation issued by the DOL at 29 C.F.R. § 2510.3-101, as modified or deemed to be modified by ERISA (the "Plan Assets Regulation"), define the term "plan assets" as applied to entities in which a plan invests, directly or indirectly, such as the Fund. The Plan Assets Regulation provides that when an ERISA Plan acquires an equity interest in an entity, and such

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equity interest is neither a publicly offered security nor a security issued by an investment company registered under the Investment Company Act, the assets of the ERISA Plan include not only the equity interest, but also include an undivided interest in the underlying assets of the entity, unless an exception to this general rule applies.

Exceptions Under the Plan Assets Regulation

The Plan Assets Regulation provides several exceptions to the general rule of plan asset treatment. Pursuant to one such exception, the assets of certain entities, such as the Fund, will not be treated as plan assets if the entity is operated as a "venture capital operating company" within the meaning of the Plan Assets Regulation ("VCOC"). Generally, for an entity to qualify as a VCOC, at least fifty percent (50%) of its assets (excluding short-term investments made pending long-term commitments or distribution to investors) valued at cost must be invested in (a) "operating companies" with respect to which the entity has the direct contractual right to participate substantially in, or to substantially influence the conduct of, the management of the operating company and the entity must actually exercise such management rights with respect to one or more such operating companies in the ordinary course of its business, or (b) "derivative investments" (as defined in the Plan Assets Regulation) (the "Asset Test"). For the purposes of qualifying as a VCOC, an "operating company" is defined as an entity that is primarily engaged, directly or through a majority owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital, and includes a "real estate operating company" as defined in the Plan Assets Regulation (but does not include another VCOC). Determination as to whether an entity qualifies as a VCOC is made at the time when the entity makes its first long-term investment (other than short-term investments made pending long-term commitments) and thereafter during a ninety-day annual valuation period each year, the first day of which shall begin no later than the anniversary of the entity's first long-term investment. In order for an entity to continue to qualify as a VCOC, the entity must meet the Asset Test on at least one day during each such ninety-day annual valuation period. Special rules apply to any wind-up of a VCOC when it enters its "distribution period" as defined in the Plan Assets Regulation.

An additional exception applies when equity participation in the entity by benefit plan investors is not "significant." Equity participation in an entity by "benefit plan investors" (as defined in Section 3(42) of ERISA) is "significant" on any date if, immediately after the most recent acquisition or disposition of any equity interest in the entity, 25% or more of the value (in the aggregate) of any class of equity interests in the entity is held by "benefit plan investors." For purposes of the 25% test, the term "benefit plan investors" includes ERISA Plans, certain other retirement plans defined in and subject to Section 4975 of the Code (such as individual retirement accounts), and entities or accounts deemed to hold "plan assets" due to an investment in such entity or account by ERISA Plans or such other retirement plans (such as insurance company general accounts). For the purposes of calculating the 25% threshold under the Plan Assets Regulation, the value of any equity interest held by a person (other than a "benefit plan investor") who has discretionary authority or control with respect to the assets of the entity or that provides investment advice for a fee (direct or indirect) with respect to such assets (or an affiliate of such person) is disregarded.

The General Partner will use reasonable best efforts to conduct the affairs and operations of the Fund in such a manner so that the assets of the Fund will not be treated as "plan assets" of any

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ERISA Plan for purposes of ERISA. In particular, the General Partner will use reasonable best efforts to either (i) limit investment in the Fund by "benefit plan investors" to a level that would not be considered "significant" under ERISA, or (ii) operate the Fund as a VCOC, or (iii) operate the Fund in compliance with any other then-available exception to the general rule of plan asset treatment. The General Partner has the authority to require a Limited Partner to withdraw from the Fund (in whole or in part) where the General Partner determines that such withdrawal is necessary to avoid having the Fund's assets deemed to be "plan assets" subject to ERISA or Section 4975 of the Code. Accordingly, the Fund is not expected to be deemed to be holding "plan assets" subject to ERISA at any time.

Reporting

Benefit plan investors may be required to report certain compensation paid by the Fund (or by third parties) to the Fund's service providers as "reportable indirect compensation" on Schedule C to the Form 5500 Annual Return (the "Form 5500"). To the extent any compensation arrangements described herein constitute reportable indirect compensation, any such descriptions are intended to satisfy the disclosure requirements for the alternative reporting option for "eligible indirect compensation," as defined for purposes of Schedule C to the Form 5500.

Additional Information

ERISA and its accompanying regulations are complex and, to a great extent, have not yet been interpreted by the courts or the administrative agencies. This discussion does not purport to constitute a thorough analysis of ERISA. Each prospective investor subject to ERISA should consult with its own legal counsel concerning the implications under ERISA of an investment in the Fund, and to confirm that such an investment will not constitute or result in a non-exempt prohibited transaction or any other violation of an applicable requirement under ERISA.

"Governmental plans" and certain "church plans", while not subject to the fiduciary responsibility and prohibited transaction provisions of ERISA, may nevertheless be subject to state or other federal laws that are substantially similar to the foregoing provisions of ERISA. Decision-makers for any such plans should consult with their counsel before making an investment in the Fund.

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XI. CERTAIN LEGAL & REGULATORY CONSIDERATIONS

Securities Act of 1933

The Limited Partner Interests described herein will not be registered under the Securities Act in reliance upon the exemptions for transactions not involving a public offering. Each investor will be required to make certain representations to the Fund, including that such investor is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act, that it is acquiring a Limited Partner Interest in the Fund for its own account, for investment purposes only and not with a view to resale or distribution, that it has received or has had access to all information it deems relevant to evaluate the merits and risks of an investment in the Fund and that it has the ability to bear the economic risk of an investment in the Fund. The Limited Partner Interests described herein will constitute "restricted securities" under the Securities Act and as such will be subject to certain restrictions on transferability. The Limited Partner Interests may not be transferred or sold unless the Limited Partner Interests have been registered under the Securities Act or an exemption from registration is available. It is not contemplated that registration under the Securities Act or other securities laws will ever be effected. The Limited Partner Interests are subject to further restrictions on transfer as described in the Partnership Agreement.

This Memorandum is not a public offering "prospectus" and does not purport to describe or otherwise address all material considerations relating to an investment in the Fund. Prior to making an investment, prospective investors and their advisors are invited to ask questions of, and obtain additional information from, the General Partner concerning the Limited Partner Interests described herein, the terms and conditions of the offering and any other relevant matters. Such information will be provided to the extent the General Partner possesses such information or can acquire it without unreasonable effort or expense.

Any subscription is subject to a determination by counsel to the Fund that the subscription is in compliance with applicable federal and state laws and regulations.

Investment Company Act of 1940

The Fund will not be registered as an investment company under the Investment Company Act pursuant to an exemption set forth in Section 3(c)(1) and/or Section 3(c)(7) of the Investment Company Act. The Fund will obtain appropriate representations and undertakings from all purchasers of Limited Partner Interests, including restrictions on transfer, to ensure that such purchasers meet the conditions of the exemption. Section 3(c)(7) of the Investment Company Act requires that each prospective purchaser be a "qualified purchaser" within the meaning of Section 2(a)(51) of the Investment Company Act. Information with respect to such requirements for "qualified purchaser" status will be included in the Fund's Subscription Agreement. The General Partner is not registered as a broker-dealer under the Exchange Act, or with the NASD, and is consequently not subject to certain record keeping and specific business practice provisions of the Exchange Act and the rules of the NASD.

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Investment Advisers Act of 1940

Neither the Management Company nor the General Partner is currently registered as an investment adviser under the Advisers Act. By virtue of being exempt from the registration requirements of the Advisers Act, the Management Company and the General Partner are not subject to the performance fee restrictions and certain other restrictions contained in the Advisers Act, and the investors in the Fund will not be afforded the protections provided under the Advisers Act to clients of advisors that are registered under the Advisers Act. The General Partner, the Management Company or an affiliate thereof may in the future register as an investment adviser under the Advisers Act to the extent required under the Advisers Act.

To the maximum extent permitted by applicable law, the General Partner and the Partnership (together with their respective related persons) hereby disclaim any duties, obligations, or status as an advisor, finder, agent, broker or dealer on behalf or in respect of any person in connection with such person's actual or proposed investment in the Partnership.

Compliance With Anti-Money Laundering Requirements

In response to increased regulatory requirements with respect to the sources of funds used in investments and other activities, the General Partner may require prospective investors to provide documentation verifying, among other things, such investor's (and any of its beneficial owners') identities and source of funds used to purchase its Limited Partner Interest in the Fund. The General Partner may decline to accept a subscription if this information is not provided or on the basis of such information that is provided.

Each prospective investor and Limited Partner will be required to make representations that such prospective investor or Limited Partner is not a prohibited country, territory, individual or entity listed on the U.S. Department of Treasury Office of Foreign Assets Control ("OFAC") website and that it is not directly or indirectly affiliated with any country, territory, individual or entity named on an OFAC list or prohibited by any OFAC sanctions programs. Such prospective investor or Limited Partner will also represent that amounts contributed by it to the Fund were not directly or indirectly derived from activities that may contravene U.S. Federal, state or international laws and regulations, including, without limitation, anti-money laundering laws and regulations.

Requests for documentation and additional information may be made at any time during which an investor holds a Limited Partner Interest in the Fund. The General Partner will take such steps as it determines are necessary to comply with applicable law, regulations, orders, directives or special measures to implement anti-money laundering laws, which steps may include the forced sale or withdrawal of an Interest. In addition, the Fund could be required to disclose information pertaining to prospective investors subscribing for an interest to governmental, regulatory or other authorities or to financial intermediaries or engage in due diligence or take other related actions in the future.

Pay-to-Play Laws, Regulations and Policies

In light of recent scandals involving money managers, a number of states and municipal pension plans have adopted so-called "pay-to-play" laws, regulations or policies which

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prohibit, restrict or require disclosure of payments to (and/or certain contacts with) state officials by individuals and entities seeking to do business with state entities, including investments by public retirement funds. The SEC also has recently adopted rules that, among other things, prohibit an investment adviser from providing advisory services for compensation with respect to a government plan investor for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. If the Management Company, the General Partner, their employees or affiliates fail to comply with such pay-to-play laws, regulations or policies, such non-compliance could have an adverse effect on the Fund by, for example, providing the basis for the withdrawal of the affected government plan investor.

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XII. ADDITIONAL INFORMATION

Legal Counsel
Proskauer Rose LLP ("Proskauer Rose") acts as counsel to the Fund, the General Partner and the Management Company in connection with the organization of the Fund and the offering of Limited Partner Interests therein. Proskauer Rose also acts as counsel to the Fund, the General Partner, the Management Company and their affiliates in connection with investments and ongoing operations of the Fund and other matters. In connection with the offering of Limited Partner Interests and subsequent advice to the Fund, the General Partner, the Management Company and their affiliates, Proskauer Rose will not be representing the Limited Partners of the Fund. No independent counsel has been retained to represent the Limited Partners of the Fund. Investors are advised to seek their own counsel in connection with a prospective investment in the Fund.

Accounting and Reporting
KPMG LLP, independent certified public accountants, will report upon the financial statements of the Fund for each fiscal year.

Availability of Principal Agreements
Prior to the consummation of the offering, the Fund will provide to each prospective investor and such investors' representatives and advisers, the opportunity to ask questions regarding the terms and conditions of this offering and to obtain any additional information required. Any questions or requests for information should be directed to Ron Hunt, New Leaf Venture Partners, L.L.C., Times Square Tower, 7 Times Square, Suite 3502, New York, New York 10036 (T: 646-871-6400).

No other persons have been authorized to give information or to make any representations concerning this offering, and if given or made, such other information or representations must not be relied upon as having been authorized by the Fund.

Copies of the Partnership Agreement and Subscription Agreement for the purchase of Limited Partner Interests will be made available upon request.

Prospective investors are urged to request any additional information they may consider necessary in making an informed investment decision. During the course of the transaction and prior to sale, each purchaser of a Limited Partner Interest is invited to ask questions of the Fund Managers concerning the terms and conditions of the offering and to obtain any additional information necessary or to verify the accuracy of the information furnished in the Memorandum.

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XIII. APPENDICES

Appendix 1

Listing of Investments by Fund

New Leaf Ventures II, L.P.

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
Realized or Partially Realized Investments									
Acadia Pharmaceuticals, Inc.	Therapeutics	2012	$ 7.7	$ 19.4	$ -	$ 19.4	2.51	2.51	581.9%
Ambit Biosciences, Inc.	Therapeutics	2013	$ 10.4	$ 11.1	$ -	$ 11.1	1.06	1.06	13.1%
Array Biopharma Inc.	Therapeutics	2012	$ 9.0	$ 20.3	$ -	$ 20.3	2.25	2.25	74.0%
Audax Health Solutions, Inc.	Convergence	2011	$ 3.8	$ 12.5	$ 1.6	$ 14.1	-	3.68	105.6%
Chimerix, Inc.	Therapeutics	2011	$ 20.6	$ 27.0	$ 44.9	$ 71.9	3.07	3.50	57.7%
Epizyme, Inc.	Therapeutics	2013	$ 3.4	$ 6.8	$ -	$ 6.8	2.03	2.03	1583.0%
Glumetrics, Inc.	Diagnostics & Infrastructure	2008	$ 10.7	$ -	$ -	$ -	-	-	NM
Intercept Pharmaceuticals, Inc.	Therapeutics	2012	$ 10.5	$ 34.1	$ -	$ 34.1	3.24	3.24	323.6%
Kalidex Pharmaceuticals, Inc.	Therapeutics	2011	$ 2.4	$ 0.2	$ -	$ 0.2	0.07	0.07	-91.6%
MEI Pharma, Inc.	Therapeutics	2012	$ 9.0	$ 10.2	$ 35.8	$ 46.0	2.94	5.12	423.2%
Presidio Pharmaceuticals, Inc.	Therapeutics	2009	$ 11.0	$ -	$ -	$ -	-	-	NM
Synageva BioPharma	Therapeutics	2009	$ 10.4	$ 75.7	$ -	$ 75.7	7.30	7.30	103.3%
Worldheart, Inc.	Healthcare Devices	2008	$ 17.0	$ 1.8	$ -	$ 1.8	0.11	0.11	NM
Total Realized or Partially Realized Investments			**$ 125.9**	**$ 219.2**	**$ 82.3**	**$ 301.5**	**2.01**	**2.39**	**40.6%**
Advanced Cell Diagnostics, Inc.	Diagnostics & Infrastructure	2012	$ 9.0	$ -	$ 9.0	$ 9.0	-	1.00	-0.4%
Afferent Pharmaceuticals, Inc.	Therapeutics	2009	$ 11.2	$ -	$ 11.2	$ 11.2	-	1.00	0.0%
Altura Medical, Inc.	Healthcare Devices	2010	$ 10.7	$ -	$ 8.3	$ 8.3	-	0.77	-12.3%
AwarePoint Corporation	Convergence	2011	$ 12.8	$ -	$ 14.1	$ 14.1	-	1.10	5.7%
Calchan Holdings LTD	Therapeutics	2011	$ 5.2	$ -	$ -	$ -	-	-	NM
CardioKinetix, Inc.	Healthcare Devices	2011	$ 12.0	$ -	$ 12.0	$ 12.0	-	1.00	0.0%
Convergence Pharmaceuticals, Ltd	Therapeutics	2010	$ 7.4	$ -	$ 7.6	$ 7.6	-	1.03	1.0%
Durata Therapeutics, Inc.	Therapeutics	2009	$ 25.0	$ -	$ 40.8	$ 40.8	-	1.63	21.2%
iRhythm Technologies, Inc.	Convergence	2011	$ 11.1	$ -	$ 11.6	$ 11.6	-	1.04	1.6%
Karos Pharmaceuticals, Inc.	Therapeutics	2010	$ 7.6	$ 0.1	$ 7.5	$ 7.6	-	1.00	0.0%
Karus Therapeutics Ltd	Therapeutics	2012	$ 5.8	$ -	$ 5.8	$ 5.8	-	1.00	0.0%
Karyopharm Therapeutics, Inc.	Therapeutics	2013	$ 1.0	$ -	$ 4.2	$ 4.2	-	4.17	1638.7%
Kitcheck, Inc.	Convergence	2013	$ 3.7	$ -	$ 3.7	$ 3.7	-	1.00	0.0%
Neuronetics, Inc.	Healthcare Devices	2009	$ 20.3	$ -	$ 21.9	$ 21.9	-	1.08	2.0%
NY Digital Health, LLC	Convergence	2012	$ 0.4	$ -	$ 0.4	$ 0.4	-	1.00	0.1%
Oxford Immunotec	Diagnostics & Infrastructure	2009	$ 11.3	$ -	$ 27.1	$ 27.1	-	2.41	28.3%
Principia BioPharma, Inc.	Therapeutics	2011	$ 9.7	$ -	$ 9.7	$ 9.7	-	1.00	0.0%
Spiracur, Inc	Healthcare Devices	2009	$ 12.0	$ -	$ 8.5	$ 8.5	-	0.70	-8.4%
TigerText, Inc.	Convergence	2012	$ 4.6	$ 0.0	$ 5.6	$ 5.7	-	1.25	22.6%
Treato Pharma	Convergence	2013	$ 3.0	$ -	$ 3.0	$ 3.0	-	1.00	0.0%
Truveris, Inc.	Convergence	2012	$ 6.5	$ -	$ 6.5	$ 6.5	-	1.00	0.0%
Versartis, Inc.	Therapeutics	2011	$ 21.2	$ -	$ 93.6	$ 93.6	-	4.41	129.4%
Public Investments	Therapeutics	2011	$ 20.6	$ 13.1	$ 29.5	$ 42.6	-	2.07	42.5%
Total Unrealized Investments			**$ 232.1**	**$ 13.2**	**$ 341.4**	**$ 354.6**	**-**	**1.53**	**20.4%**
Total New Leaf Ventures II, L.P. Investments			**$ 358.0**	**$ 232.4**	**$ 423.7**	**$ 656.1**	**2.01**	**1.83**	**29.6%**

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New Leaf Ventures I, L.P.

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
Realized or Partially Realized Investments									
Aesthetic Sciences Corporation	Healthcare Devices	2006	$ 4.1	$ -	$ -	$ -	-	-	NM
Artisan Pharma, Inc.	Therapeutics	2006	$ 10.8	$ -	$ -	$ -	-	-	NM
Aviir, Inc.	Diagnostics & Infrastructure	2007	$ 16.3	$ 0.9	$ -	$ 0.9	0.05	0.05	NM
Barrier Therapeutics, Inc.	Therapeutics	2006	$ 8.2	$ 6.4	$ -	$ 6.4	0.78	0.78	-11.8%
BioRelix, Inc.	Therapeutics	2007	$ 6.3	$ -	$ -	$ -	-	-	NM
Cerexa, Inc.	Therapeutics	2005	$ 8.0	$ 43.4	$ -	$ 43.4	5.42	5.42	197.3%
CN Therapeutics, Inc.	Therapeutics	2006	$ 0.1	$ -	$ -	$ -	-	-	NM
Interlace Medical, Inc.	Healthcare Devices	2005	$ 7.8	$ 67.3	$ 0.1	$ 67.4	8.62	8.64	84.4%
Oriel Therapeutics, Inc.	Therapeutics	2007	$ 11.1	$ 18.8	$ 12.2	$ 31.0	1.70	2.80	49.9%
Pearl Therapeutics, Inc.	Therapeutics	2007	$ 28.9	$ 72.3	$ 17.3	$ 89.6	2.50	3.10	33.1%
Proteogenix, Inc.	Diagnostics & Infrastructure	2007	$ 9.4	$ 0.8	$ -	$ 0.8	0.08	0.08	NM
Stromedix, Inc.	Therapeutics	2008	$ 10.7	$ 19.2	$ 22.5	$ 41.7	1.79	3.89	42.0%
Transcept Pharmaceuticals, Inc	Therapeutics	2005	$ 15.6	$ 7.1	$ -	$ 7.1	0.46	0.46	-11.5%
Total Realized or Partially Realized Investments			**$ 13.7**	**$ 236.2**	**$ 52.1**	**$ 288.3**	**1.72**	**2.10**	**27.5%**
Unrealized Investments									
Access Closure, Inc.	Healthcare Devices	2006	$ 24.7	$ -	$ 35.4	$ 35.4	-	1.43	6.1%
Concert Pharmaceuticals, Inc.	Therapeutics	2006	$ 6.2	$ -	$ 6.8	$ 6.8	-	1.11	1.5%
Direct Flow Medical, Inc.	Healthcare Devices	2005	$ 13.0	$ -	$ 20.2	$ 20.2	-	1.56	7.1%
IlluminOss Medical, Inc.	Healthcare Devices	2008	$ 10.1	$ -	$ 9.7	$ 9.7	-	0.97	-0.8%
Intarcia Therapeutics, Inc.	Therapeutics	2007	$ 36.9	$ -	$ 186.9	$ 186.9	-	5.06	39.9%
Relypsa, Inc.	Therapeutics	2007	$ 23.7	$ -	$ 61.8	$ 61.8	-	2.60	27.5%
ReShape Medical	Healthcare Devices	2006	$ 13.6	$ -	$ 13.7	$ 13.7	-	1.01	0.2%
Tioga Pharmaceuticals, Inc.	Therapeutics	2005	$ 19.6	$ -	$ 7.2	$ 7.2	-	0.37	-14.6%
VaxInnate, Inc.	Therapeutics	2006	$ 19.4	$ -	$ 19.6	$ 19.6	-	1.01	0.2%
Total Unrealized Investments			**$ 167.2**	**$ -**	**$ 361.4**	**$ 361.4**	**-**	**2.16**	**15.2%**
Total New Leaf Ventures I, L.P. Investments			**$ 304.5**	**$ 236.2**	**$ 413.5**	**$ 649.7**	**1.72**	**2.13**	**19.1%**

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Sprout Capital IX, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
Realized or Partially Realized Investments									
Adolor Corporation	Therapeutics	2000	$ 29.3	$ 23.5	$ -	$ 23.5	0.80	0.80	-4.2%
Affymax, Inc.	Therapeutics	2001	$ 37.2	$ 17.9	$ -	$ 17.9	0.48	0.48	-11.3%
Aspire Medical	Healthcare Devices	2004	$ 7.4	$ 0.6	$ -	$ 0.6	0.07	0.07	NM
Aspreva Pharmaceuticals	Therapeutics	2004	$ 23.2	$ 151.7	$ -	$ 151.7	6.54	6.54	95.4%
Aureon Biosciences, Inc.	Diagnostics & Infrastructure	2001	$ 34.1	$ 0.8	$ -	$ 0.8	0.02	0.02	NM
Auxilium Pharmaceuticals, Inc.	Therapeutics	2003	$ 23.1	$ 106.3	$ -	$ 106.3	4.60	4.60	37.4%
Corixa Corporation	Therapeutics	2003	$ 42.7	$ 31.1	$ -	$ 31.1	0.73	0.73	-13.2%
eHealth, Inc.	Convergence	2001	$ 12.1	$ 58.4	$ -	$ 58.4	4.83	4.83	26.8%
Epicor Medical, Inc.	Healthcare Devices	2001	$ 9.3	$ 41.8	$ -	$ 41.8	4.49	4.49	78.7%
ePocrates, Inc.	Convergence	2000	$ 17.2	$ 53.2	$ -	$ 53.2	3.10	3.10	10.8%
Focus Technologies, Inc.	Diagnostics & Infrastructure	2000	$ 32.3	$ 84.1	$ -	$ 84.1	2.61	2.61	17.8%
Gryphon Therapeutics	Therapeutics	2002	$ 13.3	$ 0.2	$ -	$ 0.2	0.01	0.01	-60.7%
Ilypsa, Inc. (fka Symyx)	Therapeutics	2003	$ 15.8	$ 109.4	$ -	$ 109.4	6.91	6.91	78.0%
ISTA Pharmaceuticals, Inc.	Therapeutics	2002	$ 42.9	$ 84.6	$ -	$ 84.6	1.97	1.97	10.8%
Kalypsys	Therapeutics	2002	$ 27.4	$ 1.1	$ -	$ 1.1	0.05	0.04	-29.7%
Lathian Systems, Inc	Convergence	2001	$ 7.1	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Metabasis Therapeutics, Inc.	Therapeutics	2001	$ 23.8	$ 1.1	$ -	$ 1.1	0.05	0.05	NM
NeuroVista Corp.	Healthcare Devices	2004	$ 8.8	$ -	$ -	$ -	-	-	NM
NxStage Medical, Inc.	Healthcare Devices	2001	$ 21.6	$ 45.1	$ -	$ 45.1	2.09	2.09	9.4%
Nyco Holdings ApS	Therapeutics	2002	$ 47.0	$ 222.8	$ 2.7	$ 225.5	4.74	4.80	33.6%
Pharsight Corporation	Convergence	2002	$ 2.8	$ 6.4	$ -	$ 6.4	2.31	2.31	16.2%
Phylos, Inc.	Therapeutics	2000	$ 10.2	$ -	$ -	$ -	-	-	NM
Progen PharmaInc. (Cellgate)	Therapeutics	2003	$ 21.4	$ 0.4	$ -	$ 0.4	0.02	0.02	-49.9%
Protedyne Corporation	Diagnostics & Infrastructure	2001	$ 21.9	$ 3.7	$ -	$ 3.7	0.17	0.17	NM
Radiant Medical, Inc.	Healthcare Devices	2000	$ 18.6	$ 0.5	$ -	$ 0.5	0.02	0.02	NM
Sirna Therapeutics, Inc.	Therapeutics	2003	$ 27.2	$ 219.3	$ -	$ 219.3	8.06	8.06	91.0%
Spiration, Inc.	Healthcare Devices	2002	$ 17.4	$ 14.5	$ -	$ 14.5	0.84	0.84	-2.4%
Tolerx, Inc.	Therapeutics	2002	$ 11.0	$ 1.5	$ -	$ 1.5	0.14	0.14	-23.0%
Triple Point	Healthcare Devices	2004	$ 0.3	$ 0.1	$ -	$ 0.1	0.28	0.28	-48.3%
VascA, Inc.	Healthcare Devices	2001	$ 12.8	$ 0.4	$ -	$ 0.4	0.03	0.03	NM
Visiogen, Inc.	Healthcare Devices	2001	$ 17.9	$ 90.0	$ -	$ 90.0	5.04	5.04	35.4%
VNUS Medical Technologies, Inc.	Healthcare Devices	2001	$ 8.0	$ 22.1	$ -	$ 22.1	2.76	2.76	15.4%
Total Realized or Partially Realized Investments			**$ 645.0**	**$ 1,392.4**	**$ 2.7**	**$ 1,395.1**	**2.18**	**2.16**	**16.8%**
Unrealized Investments									
Expression Diagnostics (XDx)	Diagnostics & Infrastructure	2004	$ 16.6	$ 0.0	$ 3.8	$ 3.8	NA	0.23	-19.4%
Intrinsic Therapeutics, Inc.	Healthcare Devices	2002	$ 26.6	$ 0.0	$ -	$ 0.0	NA	0.00	NM
Labcyte, Inc. (fka Picoliter)	Diagnostics & Infrastructure	2002	$ 10.0	$ -	$ 10.6	$ 10.6	NA	1.06	0.5%
Relypsa, Inc.	Therapeutics	2007	$ 20.3	$ 0.0	$ 50.4	$ 50.4	NA	2.49	23.9%
Sopherion Therapeutics, Inc.	Therapeutics	2004	$ 15.1	$ -	$ 0.0	$ 0.0	NA	0.00	NM
Spinewave	Healthcare Devices	2004	$ 10.5	$ -	$ 3.7	$ 3.7	NA	0.35	-11.9%
Total Unrealized Investments			**$ 99.1**	**$ 0.0**	**$ 68.4**	**$ 68.4**	**-**	**0.69**	**-5.0%**
Total Sprout Capital IX, L.P. (HCT) Investments			**$ 744.1**	**$ 1,392.4**	**$ 71.1**	**$ 1,463.6**	**2.18**	**1.97**	**14.8%**

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Sprout Capital VIII, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
All Investments									
Allos Therapeutics, Inc.	Therapeutics	1998	$ 3.5	$ 9.8	$ -	$ 9.8	2.83	2.83	47.6%
AviaHealth, Inc. (fka GoToMyDoc)	Convergence	2000	$ 2.0	$ 0.0	$ -	$ 0.0	0.02	0.02	-92.8%
Cephalon, Inc.	Therapeutics	1999	$ 5.1	$ 25.6	$ -	$ 25.6	5.01	5.01	293.2%
Charles River Laboratories	Diagnostics & Infrastructure	1999	$ 4.3	$ 22.7	$ -	$ 22.7	5.23	5.23	121.6%
Deltagen, Inc.	Therapeutics	1998	$ 19.9	$ 4.1	$ -	$ 4.1	0.20	0.20	-30.3%
eHealth, Inc.	Convergence	1999	$ 11.3	$ 20.3	$ -	$ 20.3	1.80	1.80	7.7%
Gantech International, Inc.	Therapeutics	1999	$ 2.8	$ -	$ -	$ -	-	-	NM
Keravision Inc.	Healthcare Devices	1998	$ 10.2	$ -	$ -	$ -	-	-	NM
Microban International, Ltd.	Diagnostics & Infrastructure	1999	$ 14.8	$ 39.7	$ -	$ 39.7	2.68	2.68	14.5%
Nuvelo, Inc. (fka Variagenics, Inc.)	Therapeutics	1999	$ 11.8	$ 24.8	$ -	$ 24.8	2.10	2.10	13.9%
NxStage Medical, Inc.	Healthcare Devices	1999	$ 17.8	$ 50.3	$ -	$ 50.3	2.83	2.83	14.2%
Phase Forward Incorporated	Convergence	1998	$ 9.0	$ 38.6	$ -	$ 38.6	4.31	4.31	22.4%
SGX, Inc.	Therapeutics	2000	$ 15.0	$ 1.6	$ -	$ 1.6	0.11	0.11	-35.3%
Skila, Inc.	Convergence	1998	$ 9.0	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Spotfire, Inc.	Convergence	1999	$ 9.9	$ 24.8	$ -	$ 24.8	2.50	2.50	12.7%
VascA, Inc.	Healthcare Devices	1999	$ 7.3	$ 0.1	$ -	$ 0.1	0.02	0.02	NM
VNUS Medical Technologies, Inc.	Healthcare Devices	1999	$ 3.8	$ 11.1	$ -	$ 11.1	2.90	2.90	12.7%
Total Sprout Capital VIII, L.P. (HCI) Investments			**$ 157.5**	**$ 273.7**	**$ -**	**$ 273.7**	**1.74**	**1.74**	**10.1%**

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HOUSE_OVERSIGHT_024103

Sprout Capital VII, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
All Investments									
Adeza Biomedical Corporation	Diagnostics & Infrastructure	1996	$ 4.8	$ 27.7	$ -	$ 27.7	5.75	5.75	20.1%
Allos Therapeutics, Inc.	Therapeutics	1998	$ 2.6	$ 7.5	$ -	$ 7.5	2.87	2.87	38.8%
Aradigm Corporation	Therapeutics	1994	$ 2.8	$ 15.3	$ -	$ 15.3	5.45	5.45	39.3%
AtheroGenics, Inc.	Therapeutics	1996	$ 3.8	$ 7.1	$ -	$ 7.1	1.87	1.87	13.7%
AviaHealth, Inc. (fka GoToMyDoc)	Convergence	2000	$ 1.6	$ 0.0	$ -	$ 0.0	0.02	0.02	-92.8%
CombiChem, Inc.	Therapeutics	1995	$ 3.9	$ 9.4	$ -	$ 9.4	2.43	2.43	26.5%
Connetics Corp. (fka Connective)	Therapeutics	1995	$ 6.3	$ 14.2	$ -	$ 14.2	2.24	2.24	15.5%
FemRX	Healthcare Devices	1995	$ 2.2	$ 3.2	$ -	$ 3.2	1.47	1.47	11.6%
Healtheon/WebMD (Sapient)	Convergence	1996	$ 3.0	$ 39.8	$ -	$ 39.8	13.42	13.42	190.1%
Hearten Medical	Healthcare Devices	1997	$ 1.7	$ -	$ -	$ -	-	-	NM
IntraBiotics Pharmaceuticals	Therapeutics	1994	$ 3.9	$ 7.3	$ -	$ 7.3	1.89	1.89	13.4%
Lynx Therapeutics, Inc.	Diagnostics & Infrastructure	1995	$ 1.1	$ 2.9	$ -	$ 2.9	2.72	2.72	25.4%
NxStage Medical, Inc.	Healthcare Devices	2003	$ 3.3	$ 18.9	$ -	$ 18.9	5.80	5.80	20.9%
Orquest, Inc.	Healthcare Devices	1995	$ 5.5	$ 7.8	$ -	$ 7.8	1.42	1.42	6.1%
Pathology Partners	Diagnostics & Infrastructure	1997	$ 3.3	$ 22.4	$ -	$ 22.4	6.82	6.82	38.2%
Pharsight Corporation	Convergence	1997	$ 4.9	$ 7.3	$ -	$ 7.3	1.48	1.48	6.0%
Point Biomedical	Diagnostics & Infrastructure	1997	$ 9.2	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Prometheus Laboratories, Inc.	Therapeutics	1998	$ 7.8	$ 38.8	$ -	$ 38.8	5.00	5.00	13.4%
Salient Interventional Systems	Healthcare Devices	1998	$ 2.7	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Skila, Inc.	Convergence	1998	$ 5.2	$ 0.2	$ -	$ 0.2	0.05	0.05	NM
TriPath Imaging, Inc.	Diagnostics & Infrastructure	1996	$ 4.9	$ 13.9	$ -	$ 13.9	2.83	2.83	17.2%
VascA, Inc.	Healthcare Devices	1996	$ 6.5	$ 0.1	$ -	$ 0.1	0.02	0.02	NM
VNUS Medical Technologies, Inc.	Healthcare Devices	1997	$ 4.3	$ 15.7	$ -	$ 15.7	3.66	3.66	12.1%
Xcyte Therapies, Inc. (CDR)	Therapeutics	1996	$ 6.1	$ 0.5	$ -	$ 0.5	0.08	0.08	-33.6%
Total Sprout Capital VII, L.P. (HCI) Investments			**$ 101.2**	**$ 260.0**	**$ -**	**$ 260.0**	**2.57**	**2.57**	**18.6%**

Sprout Growth II, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
All Investments									
Adeza Biomedical Corporation	Diagnostics & Infrastructure	1996	$ 3.9	$ 22.7	$ -	$ 22.7	5.75	5.75	20.1%
AviaHealth, Inc. (fka GoToMyDoc)	Convergence	2000	$ 1.3	$ 0.0	$ -	$ 0.0	0.02	0.02	-92.8%
Cephalon, Inc.	Therapeutics	1999	$ 4.1	$ 20.5	$ -	$ 20.5	5.01	5.01	293.2%
Connetics Corp. (fka Connective)	Therapeutics	1997	$ 3.2	$ 6.5	$ -	$ 6.5	2.05	2.05	16.7%
IVAC Holdings, Inc.	Healthcare Devices	1995	$ 0.9	$ 3.0	$ -	$ 3.0	3.31	3.31	121.9%
Pathology Partners	Diagnostics & Infrastructure	1997	$ 2.7	$ 18.3	$ -	$ 18.3	6.82	6.82	38.1%
Total Sprout Growth II, L.P. (HCI) Investments			**$ 16.1**	**$ 70.9**	**$ -**	**$ 70.9**	**4.42**	**4.42**	**43.8%**

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Appendix 2

All Funds Gross and Net Returns

$ amounts in millions, as of March 31, 2014

	Gross Basis							
	Gross Cost and Value				Gross Multiple		Gross IRR	
	Total Cost	Total	Realized	Unrealized	Realized	Overall	Realized	Overall
New Leaf Ventures II, L.P. (2008)	$358.0	$656.1	$232.4	$423.7	2.01x	1.83x	33.3%	29.6%
New Leaf Ventures I, L.P. (2005)	$304.5	$649.7	$236.2	$413.5	1.72x	2.13x	22.9%	19.1%
Sprout Capital IX, L.P. (2000) (Healthcare Technology)	$744.1	$1,463.6	$1,392.4	$71.1	2.18x	1.97x	16.8%	14.8%
Sprout Capital VIII, L.P. (1998) (Healthcare Technology)	$157.5	$273.7	$273.7	$0.0	1.74x	1.74x	10.1%	10.1%
Sprout Capital VII, L.P. (1995) (Healthcare Technology)	$101.2	$260.0	$260.0	$0.0	2.57x	2.57x	18.6%	18.6%
Sprout Growth II, L.P. (1995) (Healthcare Technology)	$16.1	$70.9	$70.9	$0.0	4.42x	4.42x	43.8%	43.8%

	Net Basis							
	Net Cost and Value					Net Metrics Multiples		
	Fund Size	Paid-In Capital	Distributed Value	Equity In Fund	Total Value	Distributed / Paid In	Total Value / Paid In	Total Value IRR
New Leaf Ventures II, L.P. (2008)	$450.0	$407.3	$204.2	$386.9	$591.1	0.50x	1.45x	16.7%
New Leaf Ventures I, L.P. (2005)	$310.0	$302.6	$154.7	$374.8	$529.5	0.51x	1.75x	12.0%
Sprout Capital IX, L.P. (2000) (Healthcare Technology)	$690.0	$690.0	$1,071.5	$71.1	$1,142.7	1.55x	1.66x	9.3%
Sprout Capital VIII, L.P. (1998) (Healthcare Technology)	$147.1	$147.1	$218.7	$0.0	$218.7	1.49x	1.49x	6.0%
Sprout Capital VII, L.P. (1995) (Healthcare Technology)	$95.2	$95.2	$207.0	$0.0	$207.0	2.17x	2.17x	12.0%
Sprout Growth II, L.P. (1995) (Healthcare Technology)	$15.3	$15.3	$56.3	$0.0	$56.3	3.69x	3.69x	28.9%

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Methodology Used to Calculate Net Returns Numbers for Sprout Healthcare Technology Portfolios

Estimated net returns numbers for the managed healthcare portfolio of the Sprout funds are based on New Leaf's calculations of synthetic net returns. The synthetic net returns for the healthcare technology investments in each Sprout Fund are an estimate of what the net returns would have been for these investments, if they had been managed in a standalone healthcare technology venture capital fund structure rather than one set of investments as part of a larger, diversified venture capital fund. The synthetic net returns were computed assuming a fund size required to fund 100% of the total cost of the healthcare investments in each of the Sprout funds using both called and recycled capital, a management fee of 2% payable quarterly and a carried interest. The net return reflects reinvestment of certain proceeds, gains and other proceeds by the Sprout healthcare portfolio synthetic funds to the extent permitted under the partnership governing documents. A detailed example of the calculation is below.

> **Sprout IX**: Total actual HCT investments of $740M; 2% management fees, resulting in $120M of management fees and expenses from inception-to-date; 25% carried interest; Standalone fund size of $690M ($735M investments with cash recycling of 6%); Total realizations have been $1,375M and total remaining value is $50M. Assumes $130M in total carried interest to GPs already paid out; Yields Total Distributed to LPs of $1,075M ($1,375M - $120M fees - $130M carry - $50M recycling) / $690M = 1.56x; Yields Total Remaining to LPs of $50M / $690M = 0.07x

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Appendix 3

PME+ Methodology

Public Market Equivalent ("PME+") is used to compare the net performance of each of the Sprout HC synthetic funds and NLV funds to the performance of a same size, hypothetical investment in a fund that tracked a public market index. The investments in the hypothetical public market index funds have identical cash inflow schedules and proportionately comparable cash outflow schedules. The cash outflow schedules are set so that the remaining equity value of the public equivalent fund is exactly equal to the remaining equity value of the benchmarked private equity fund at the end of the benchmarking period. The analysis is presented to illustrate the comparative returns a limited partner would have generated by investing in the hypothetical public market index fund at the same time and in the same amounts as had been invested in each of the NLV or Sprout (HC portion only) synthetic funds. The NLV or Sprout HC funds are presented as net, which includes the impact of management fees, expenses, and carried interest. The public market index funds do not have any impact of fees or carried interest. A more detailed description of the PME+ methodology used is available in: Rouvinez, Christophe. "Asset Class: Beating the Public Market." Private Equity International. January 2003. 26-28

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Appendix 5

ENDNOTES

Except as otherwise expressly noted, all performance information contained herein, including rates of return, is as of March 31, 2014 and is unaudited. The performance information is based on the cumulative invested capital, cumulative cash dividends and realized and unrealized sales proceeds in portfolio companies. Where designated as "gross", the performance information is presented on a gross basis with regard to expenses and does not reflect deductions for any management fees, the general partner's carried interest or other expenses. Where designated as "net", the performance information is presented on a net basis after giving effect to management fees, the general partner's carried interest and other expenses. Please refer to Section III: "Summary of Historical Investment Performance" and the endnotes below for a more detailed description of the performance of the NLV-I, NLV-II and the Sprout Funds. An investment in the Fund does not represent an interest in any indicated investment or any investment portfolio of any related or other investment fund, including any investment or fund managed by the Fund Managers. Disclosure of past performance herein is for informational purposes only and is not indicative of future results.

[A] The financial data contained herein relating to the valuations and investment performance of NLV-I, NLV-II, the Sprout Funds and their investments (including the I.C. portfolio thereof) are estimates prepared by NLV as of March 31, 2014, and have not been audited. The vintage year of each fund represents the first year that an investment in a portfolio company was either committed to or funded. While NLV's valuations of unrealized investments are based on assumptions that NLV believes are reasonable under the circumstances, the actual realized returns on unrealized investments will depend on, among other factors, future operating results, the value of the assets and market conditions at the time of disposition, any related transaction costs and the timing and manner of the sale, all of which may differ from the assumptions on which the valuations used in the prior performance data contained herein are based. Accordingly, the actual realized returns on these unrealized investments may differ materially and adversely from the (assumed) returns indicated herein. Past performance is not indicative of future results. There can be no assurance that the Fund will achieve results comparable to those shown herein, will be able to avoid losses or will be able to achieve its investment objectives. Except as specifically noted, all performance information contained herein is on a "gross" basis before giving effect to management fees, the general partner's carried interest, taxes and other expenses, the application of which would reduce such prior performance and indicated rates of return. Except as otherwise indicated, performance information is for NLV-I, NLV-II and the Fund Managers' investments in the Sprout Funds. While the Fund Managers initiated, led, co-led, managed or were otherwise instrumental in the identification, negotiation, execution and/or management of these investments (as further described herein), other individuals, including individuals from Sprout Group with respect to the Sprout Funds, were involved in and assisted with these investments.

[B] Rates of return for public indices are provided for informational purposes only and do not reflect a basis for comparison for venture capital interests, as the market volatility, liquidity and other characteristics of venture capital investments are materially different from public indices. The S&P 500 Stock Index is an unmanaged market capitalization of 500 U.S. equities

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generally considered to be representative of U.S. stock market activity. The NASDAQ Composite Index measures all NASDAQ domestic and non-U.S. based common stocks listed on the NASDAQ Stock Market. The NASDAQ Biotechnology Index includes securities of NASDAQ-listed companies classified according to the Industry Classification Benchmark as either Biotechnology or Pharmaceuticals which also meet other eligibility criteria. The Dow Jones Industrial Average is an index that shows how 30 large, publicly owned companies based in the U.S. have traded during a standard trading session in the stock market.

[C] Data provided by Cambridge Associates at no charge. Cambridge U.S. VC healthcare data as of Q1'13. Where results on the Sprout Funds refer to net basis, it is the result of a methodology that adjusts the gross results for the healthcare technology investments for recycling, management fees, and carried interest so they can be compared to industry sources (e.g., Cambridge Associates) on a directly comparable basis. The methodology and assumptions used to adjust from gross to net basis is described in Appendix 2.

[D] The gross annual compound internal rate of return ("IRR") and gross multiple of invested capital as of March 31, 2014 are before giving effect to taxes, management fees, the general partner's carried interest and other expenses. The net IRR and net multiple of invested capital as of March 31, 2014 are after giving effect to management fees, the general partner's carried interest and other expenses. All IRRs presented are annualized and calculated on the basis of quarterly inflows and outflows of cash and unrealized values, assuming such inflows and outflows occurred as of quarter end and all remaining investments were sold at the current holding value through as of March 31, 2014. There can be no assurance that unrealized investments will be realized at the valuations shown.

[E] The results for the Sprout Funds represent results from the healthcare technology portion of the Sprout Funds, which represents between 8% and 65% of the cost basis of the investments of the funds taken as a whole. Healthcare technology means, collectively, the biopharmaceutical, medical device, and diagnostics and infrastructure sectors. See Appendix 2 for the Methodology Used to Calculate Net Return Numbers for Sprout Healthcare Technology Portfolios.

[F] **Net Distributed to Paid-in Capital ("DPI")**: Calculated based on (1) called capital of a fund (based on individual called capital percentages and fund sizes across multiple funds) and (2) distributed capital of a fund (based on aggregating individual funds distributed capital amounts, as calculated using DPI and called individual fund called amounts). For the purposes of this ratio for NLV-I and NLV-II, the "deemed contribution" of the general partner is included in the total amount of capital contributions made by the fund's partners.

[G] **(Distributed + Public) to Paid-in Capital**: Calculated based on (1) called capital of a fund (based on individual called capital percentages and fund sizes across multiple funds) and (2) distributed capital of a fund (based on aggregating individual funds distributed capital amounts, as calculated using DPI and called individual fund called amounts) plus the unrealized value of publicly traded securities based on the closing market price of the security. For the purposes of this ratio for NLV-I and NLV-II, the "deemed contribution" of the general partner is included in the total amount of capital contributions made by the fund's partners.

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[H] **(Distributed + Liquid Public) to Paid-in Capital**: Calculated based on (1) called capital of a fund (based on individual called capital percentages and fund sizes across multiple funds) and (2) distributed capital of a fund (based on aggregating individual funds distributed capital amounts, as calculated using DPI and called individual fund called amounts) plus the unrealized value of freely tradable publicly traded securities based on the closing market price of the security. This is based on the assumption that NLV can trade out of 10% of daily trading volume over next 30 days based on last 30 days ADTV.

For the purposes of this ratio for NLV-I and NLV-II, the "deemed contribution" of the general partner is included in the total amount of capital contributions made by the fund's partners.

[I] **Realized Cost**: Represents the cost of investment attributable to the realized portion of such investment.

[J] **Total Cost**: Represents the overall cost of investment.

[K] **Realized Value**: Represents gross proceeds received from the sale of an underlying investment or group of investments.

[L] **Unrealized Value, Unrealized/(Public) or Unrealized/(Private)**: All private investments are fair value as determined in good faith by the General Partner. Fair value is based on the best information available and is determined by reference to information including, but not limited to, the following: operating results, financial condition, public or private transactions, valuations for publicly-traded compatible companies, recent purchases of the same or similar securities, progress of clinical trials or other operational progress of an investment's product, and/or other measures, and consideration of any other pertinent information including the types of securities held and restrictions on disposition. Public represents a portfolio company whose securities are traded on a public exchange such as NASDAQ. The unrealized value of publicly traded securities held shown in parenthesis is valued at the closing market price. The unrealized value of warrants for any publicly traded companies is valued based on the Black-Sholes Method.

[M] **Total Value**: Represents realized value plus Unrealized Value.

[N] **Multiple**: Represents the ratio of Total Value, Realized Value or Unrealized Value to the corresponding amount of capital invested, expressed as a multiple.

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XIV. CERTAIN OFFERING NOTICES

NOTICE TO RESIDENTS OF FLORIDA

The Interests being offered have not been registered with the Florida Division of Securities. If sales are made to five or more Florida purchasers, each sale is voidable by the purchaser within three days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer or within three days after availability of that privilege is communicated to such purchaser, whichever occurs later.

NOTICE TO NON-U.S. RESIDENTS GENERALLY

No action has been or will be taken in any jurisdiction outside the U.S. that would permit an offering of these securities, or possession or distribution of offering material in connection with the issue of these securities, in any country or jurisdiction where action for that purpose is required. It is the responsibility of any person wishing to subscribe for the Interests to inform themselves of and to observe all applicable laws and regulations of any relevant jurisdictions. Prospective investors should inform themselves as to the legal requirements within the countries of their citizenship, residence, domicile and place of business with respect to the acquisition, holding or disposal of the Interests, and any foreign exchange restrictions that may be relevant thereto.

AUSTRALIA

The Fund is not a registered managed investment scheme, nor is it required to be registered as a managed investment scheme, and this Memorandum is not a product disclosure document lodged or required to be lodged with the Australian Securities and Investments Commission. Interests in the Fund will only be offered in Australia to persons to whom such securities may be offered without a product disclosure statement under Part 7.9 of the Corporations Act 2001 (Cth). Interests in the Fund subscribed for by investors in Australia must not be offered for resale in Australia for 12 months from allotment except in circumstances where disclosure to investors under the Corporations Act 2001 (Cth) would not be required or where a compliant product disclosure statement is produced. Prospective investors in Australia should confer with their professional advisors if in any doubt about their position.

AUSTRIA

Interests in the Fund may only be offered in the Republic of Austria in compliance with the provisions of the Austrian Capital Market Act, the Austrian Investment Funds Act and other laws applicable in the Republic of Austria governing the offer, issue and sale of the interests in the Republic of Austria. Interests in the Fund are being offered exclusively to a limited number of investors in Austria and are therefore not subject to the public offering requirements of the Austrian Capital Market Act or the Austrian Investment Fund Act. Interests in the Fund are not registered or otherwise authorized for public offer either under the Austrian Capital Market Act, the Austrian Investment Fund Act or any other securities regulation in Austria. The recipients of this Memorandum and other selling material in respect to interests in the Fund have been individually selected and are targeted exclusively on the basis of a private placement. This offer may not be made to any other persons than the recipients to whom this Memorandum is personally addressed. Any investor intending to offer and resell interests in the Fund in Austria is solely responsible that any offer and resale takes place in compliance with the applicable provisions of the Austrian Capital Market Act, the Austrian Investment Fund Act or any other applicable securities regulation.

BELGIUM

The Fund has not been and will not be registered with the Belgian Financial Services and Markets Authority (Autoriteit voor financiële diensten en markten / Autorité des Services Financiers et des Marchés) ("FSMA") as a foreign collective investment institution referred to under Article 127 of the Belgian Act of July 20, 2004 relating to certain forms of collective management of investment portfolios. This Memorandum and the offering of Limited Partner Interests in the Fund have not been and will not be notified to, and have not been approved or disapproved by, the FSMA. The public offering of Limited Partner Interests in the Fund in Belgium within the meaning of the Belgian Act of July 20, 2004, and the Belgian Act of June 16, 2006 on the public offering of investment instruments and the admission of investment instruments to listing on a regulated market has not been authorized by the Fund. The offering may therefore not be advertised, and Limited Partner Interests in the Fund may not be offered, sold, transferred or delivered to, or subscribed to by, and no memorandum, information circular, brochure or similar document may be distributed to, directly or indirectly, any individual or legal entity in Belgium, except (i) to "qualified investors" as referred to in Article 10, § 1 of the aforementioned Act of June 16, 2006, (ii) subject to the restriction of a minimum investment of €100,000 per investor or (iii) in any other circumstances in which the present offering does not qualify as a public offering in accordance with the aforementioned Act of June 16, 2006. This Memorandum has been issued to the intended recipient for personal use only and exclusively for the purpose of the offering. Therefore, it may not be used for any other purpose, nor passed on to any other person in Belgium.

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BRAZIL
The Fund is not listed with any stock exchange, organized over the counter market or electronic system of securities trading. Interests in the Fund have not been and will not be registered with any securities exchange commission or other similar authority, including the Brazilian Securities and Exchange Commission (Comissão de valores Mobiliários - or the "CVM"). Interest in the Fund will not be directly or indirectly offered or sold within Brazil through any public offering, as determined by Brazilian law and by the rules issued by the CVM, including Law No. 6,385 (Dec. 7, 1976) and CVM Rule No. 400 (Dec. 29, 2003), as amended from time to time, or any other law or rules that may replace them in the future.

Acts involving a public offering in Brazil, as defined under Brazilian laws and regulations and by the rules issued by the CVM, including Law No. 6,385 (Dec. 7, 1976) and CVM Rule No. 400 (Dec. 29, 2003), as amended from time to time, or any other law or rules that may replace them in the future, must not be performed without such prior registration. Persons in Brazil wishing to acquire interests in the Fund should consult with their own counsel as to the applicability of these registration requirements or any exemption therefrom. Without prejudice to the above, the sale and solicitation of interests in the Fund is limited to qualified investors as defined by CVM Rule No. 409 (Aug. 18, 2004), as amended from time to time or as defined by any other rule that may replace it in the future.

This Memorandum is confidential and intended solely for the use of the addressee and cannot be delivered or disclosed in any manner whatsoever to any person or entity other than the addressee.

COLUMBIA
Neither this Memorandum nor the interests in the Fund have been reviewed or approved by the Financial Superintendency of Colombia (the "FSC") or any other governmental authority in Colombia, nor has the Fund or any related person or entity received authorization or licensing from the FSC or any other governmental authority in the Colombia to market or sell interests in the Fund within Colombia. No public offering of interests in the Fund is being made in Colombia or to Colombian residents. By receiving this Memorandum, the recipient acknowledges that it contacted New Leaf at its own initiative and not as a result of any promotion or publicity by New Leaf. This Memorandum is strictly private and confidential and may not be reproduced, used for any other purpose or provided to any person other than the intended recipient.

DENMARK
This Memorandum has not been and will not be filed with or approved by the Danish Financial Supervisory Authority or any other regulatory authority in Denmark and Limited Partner Interests in the Fund have not been and are not intended to be listed on a Danish regulated market. Limited Partner Interests in the Fund have not been and will not be offered in Denmark under the E.U. Alternative Investment Fund Managers Directive (as implemented into Danish law). Consequently, this Memorandum may not be made available and interests in the Fund may not be marketed or offered for sale directly or indirectly to any natural or legal person in Denmark except as permitted under applicable rules.

FINLAND
As the Fund is a closed end fund, the marketing of interests in the Fund is not interpreted to be subject to the provisions of the Finnish Act on Mutual Funds (sijoitusrahastolaki, 29.1.1999, as amended, the "MFA"). Accordingly prospective investors should acknowledge that this Memorandum is not a fund prospectus as meant in the MFA and the marketing of interests in the Fund is not subject to a marketing permission from the Financial Supervisory Authority (Finanssivalvonta; "FIN-FSA"). Furthermore, even if interests in the Fund were to be construed as "securities" as defined in the Finnish Securities Markets Act (arvopaperimarkkinalaki, 14.12.2012/746, as amended the "SMA"), based on the exemptions set forth in the SMA, the offering of interests in the Fund would be exempted from the prospectus requirements of the SMA (based on the limited number of Finnish offerees and the minimum investment and transfer restrictions specified herein). Accordingly prospective investors must acknowledge that this Memorandum is not a prospectus within the meaning set forth in the SMA. Prospective investors should also note that neither the General Partner or the Management Company is an investment firm (sijoituspalveluyritys) within the meaning of the Finnish Investment Services Act (sijoituspalvelulaki 747/2012) and they are not subject to the supervision of the FFSA. Any prospective investors should acknowledge that they will not be treated as clients of placement agents (if any) engaged by the Management Company in connection with the placement of interests in the Fund and such placement agents may not be under any duty to safeguard the interests of prospective investors. Furthermore, the Fund is not a property fund as meant in the Finnish Act on Property Funds (kiinteistörahastolaki, 1173/1997). The FIN-FSA has not authorized any offering for the subscription of interests in the Fund; accordingly, interests in the Fund may not be offered or sold in Finland or to residents thereof except as permitted by Finnish law.

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This Memorandum has been prepared for private information purposes only and it may not be used for, and shall not be deemed, a public offering of interests in the Fund. This Memorandum is strictly for private use by its holder and may not be passed on to third parties or otherwise distributed publicly.

FRANCE

This Memorandum (including any amendment, supplement or replacement thereto) is not being distributed in the context of a public offering in France within the meaning of Article L. 411-1 of the French Monetary and Financial Code (*Code monétaire et financier*). This Memorandum has not been and will not be submitted to the French *Autorité des marchés financiers* ("AMF") for approval in France and accordingly may not and will not be distributed to the public in France.

Pursuant to Article 211-3 of the AMF General Regulation, French residents are hereby informed that:

1. the transaction does not require a prospectus to be submitted for approval to the AMF;

2. persons or entities referred to in Point 2°, Section II of Article L.411-2 of the Monetary and Financial Code may take part in the transaction solely for their own account, as provided in Articles D. 411-1, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code; and

3. the financial instruments thus acquired cannot be distributed directly or indirectly to the public otherwise than in accordance with Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the Monetary and Financial Code.

This Memorandum is not to be further distributed or reproduced (in whole or in part) in France by the recipients of this Memorandum. This Memorandum has been distributed on the understanding that such recipients will only participate in the issue or sale of Limited Partner Interests in the Fund for their own account and undertake not to transfer, directly or indirectly, Limited Partner Interests in the Fund to the public in France, other than in compliance with all applicable laws and regulations and in particular with Articles L. 411-1 and L. 411-2 of the French Monetary and Financial Code.

GERMANY

The Fund has been notified to the Bundesanstalt für Finanzdienstleistungsaufsicht (the German Federal Financial Supervisory Authority or "BaFin") for marketing to (vertrieben as this term is construed under the German Capital Investment Code (Kapitalanlagegesetzbuch - KAGB) in the Federal Republic of Germany solely to professional investors (as this term is construed under the KAGB). The Limited Partner Interests in the Fund may not be distributed in the Federal Republic of Germany or used in connection with any offer for subscription of the Limited Partner Interests in the Fund other than to professional investors. Neither this Memorandum nor any other document relating to the Fund or the Limited Partner Interests in the Fund, as well as the information contained therein may be supplied in Germany to persons other than professional investors.

HONG KONG

The contents of this Memorandum have not been reviewed or approved by any regulatory authority in Hong Kong. This Memorandum does not constitute an offer or invitation to the public in Hong Kong to acquire interests in the Fund. Accordingly, unless permitted by the securities laws of Hong Kong, no person may issue or have in its possession for the purposes of issue, this Memorandum or any advertisement, invitation or document relating to interests in the Fund, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong other than in relation to interests in the Fund which are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" (as such term is defined in the Securities and Futures Ordinance of Hong Kong (Cap. 571) (the "SFO") and the subsidiary legislation made thereunder) or in circumstances which do not result in this Memorandum being a "prospectus" as defined in the Companies Ordinances of Hong Kong (Cap. 32) (the "CO") or which do not constitute an offer or an invitation to the public for the purposes of the SFO or the CO. The offer of interests in the Fund is personal to the person to whom this Memorandum has been delivered by or on behalf of the Fund, and a subscription for interests in the Fund will only be accepted from such person. No person to whom a copy of this Memorandum is issued may issue, circulate or distribute this Memorandum in Hong Kong or make or give a copy of this Memorandum to any other person. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this Memorandum, you should obtain independent professional advice.

ICELAND

This Memorandum has been issued to the recipient, for personal use only, exclusively in connection with a private placement of interests in the Fund. Accordingly, this Memorandum may not be used by the recipient for any other

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purpose nor forwarded to any other person or entity in Iceland. The offering of interests in the Fund described in this Memorandum is a private placement under Icelandic law and the interests in the Fund may only be offered and sold (as well as resold) in Iceland to a person or entity that is a Qualified Investor as defined in Item No. 9 of Article 43 of the Icelandic Act on Securities Transactions. Also, any subsequent transfer or resale of interests in the Fund in Iceland will need to comply with the applicable provisions of the Icelandic Act on Securities Transactions. Prospective Icelandic investors should consult with their own tax advisors as to the tax consequences of an investment in the Fund.

ITALY

The Fund is not a UCITS fund. The offering of interests in the Fund in Italy has not been nor will it be authorized by the Bank of Italy and the Commissione Nazionale per la Società e la Borsa. Interests in the Fund are offered upon the express request of the investor, who has directly contacted the Fund or its sponsor on the investor's own initiative. No active marketing of the Fund has been made nor will it be made in Italy, and this Memorandum has been sent to the investor at the investor's unsolicited request. The investor acknowledges and confirms the above and hereby agrees not to sell or otherwise transfer any Interests in the Fund or to circulate this Memorandum in Italy unless expressly permitted by, and in compliance with, applicable law.

JAPAN

Interests in the Fund are a security set forth in Article 2, Paragraph 2, Item 6 of the Financial Instruments and Exchange Law of Japan (the "FIEL"). No public offering of interests in the Fund is being made to investors resident in Japan and in accordance with Article 2, paragraph 3, Item 3, of the FIEL, no securities registration statement pursuant to Article 4, paragraph 1, of the FIEL has been made or will be made in respect to the offering of interests in the Fund in Japan. The offering of interests in the Fund in and investment management for the Fund in Japan is made as "Special Exempted Business for Qualified Institutional Investors, Etc." under Article 63, Paragraph 1, of the FIEL. Thus, interests in the Fund are being offered only to a limited number of investors in Japan. Neither the Fund nor any of its affiliates is or will be registered as a "financial instruments firm" pursuant to the FIEL. Neither the Financial Services Agency of Japan nor the Kanto Local Finance Bureau has passed upon the accuracy or adequacy of this Memorandum or otherwise approved or authorized the offering of interests in the Fund to investors resident in Japan.

LUXEMBOURG

No public offering of interests in the Fund is being made to investors resident in Luxembourg. Interests in the Fund are being offered only to a limited number of sophisticated and professional investors in Luxembourg. The Commission de Surveillance du Secteur Financier of Luxembourg has not passed upon the accuracy or adequacy of this Memorandum or otherwise approved or authorized the offering of interests in the Fund to investors resident in Luxembourg.

NETHERLANDS

In the Netherlands, Limited Partner Interests in the Fund may only be offered, sold, transferred or assigned, as part of their initial distribution or at any time thereafter, to natural persons who or legal entities which are Qualified Investors as defined in Section 1:1 of the Financial Supervision Act (Wet op het financieel toezicht (the "FSA")). Limited Partner Interests in the Fund may not otherwise be offered, directly or directly, in the Netherlands. Where an offer is made exclusively to Qualified Investors within the meaning of section 1:1 of the FSA, the General Partner is not under an obligation to have the offering memorandum approved by the Dutch Authority for the Financial Markets or by a competent authority of another member state of the European Economic Area in accordance with Prospectus Directive 2003/71/EC and Prospectus Regulation 809/2004/EC.

NORWAY

This Memorandum does not constitute an invitation or a public offer of securities in the Kingdom of Norway. It is intended only for the original recipient and is not for general circulation in the Kingdom of Norway. The offer herein is not subject to the prospectus requirements laid down in the Norwegian Securities Trading Act. This Memorandum has not been nor will it be registered with or authorized by any governmental body in Norway. Interests in the Fund may only be solicited, acquired or offered in or from Norway to investors for a total face value of at least €100,000.

SAUDI ARABIA

Neither this Memorandum nor the interests in the Fund have been approved, disapproved or passed on in any way by the Capital Market Authority or any other governmental authority in the Kingdom of Saudi Arabia, nor has the Fund received authorization or licensing from the Capital Market Authority or any other governmental authority in

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the Kingdom of Saudi Arabia to market or sell interests in the Fund within the Kingdom of Saudi Arabia. This Memorandum does not constitute and may not be used for the purpose of an offer or invitation. No services relating to interests in the Fund, including the receipt of applications and the allotment or redemption of such interests, may be rendered by the Fund within the Kingdom of Saudi Arabia.

SOUTH AFRICA

Neither this Memorandum nor the interests in the Fund have been approved, disapproved or passed on in any way by the Financial Services Board or any other governmental authority in South Africa, nor has the Fund received authorization or licensing from the Financial Services Board or any other governmental authority in South Africa to market or sell interests in the Fund within South Africa. This Memorandum is strictly confidential and may not be reproduced, used for any other purpose or provided to any person other than the intended recipient.

SOUTH KOREA

In South Korea, interests in the Fund are being offered only to persons prescribed by Article 301, Paragraph 2 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act ("Qualified Professional Investors"). The Subscriber hereby represents and warrants to the Fund that the Subscriber (i) is a Qualified Professional Investor as prescribed by the Financial Investment Services and Capital Markets Act and (ii) is fully aware of the meaning, effect and ramifications of being an Qualified Professional Investor and fully agrees to be treated in accordance therewith.

SPAIN

Interests in the Fund may not be offered or sold in Spain except in accordance with the requirements of the Spanish Securities Market Act (Ley 24/1988, de 28 de Julio, del Mercado de Valores) as amended and restated, Royal Decree 1310/2005, on securities admission to trade on secondary official markets, public offerings or subscriptions, and prospectus required to such effects, and/or subject and in compliance with the requirements contained in such regulations (Real Decreto 1310/2005, de 4 de noviembre, por el que se desarrolla parcialmente la Ley 24/1988, de 28 de julio, del Mercado de Valores, en materia de admisión a negociación de valores en mercados secundarios oficiales, de ofertas públicas de venta o suscripción y del folleto exigible a tales efectos), and subsequent legislation. This Memorandum is neither verified nor registered with the Comisión Nacional del Mercado de Valores, and therefore a public offer of interests in the Fund will not be carried out in Spain.

SWEDEN

This Memorandum has not been nor will it be registered with or approved by Finansinspektionen (the Swedish Financial Supervisory Authority). Accordingly, this Memorandum may not be made available, nor may the interests in the Fund offered hereunder be marketed and offered for sale in Sweden, other than under circumstances which are deemed not to require a prospectus under the Swedish Financial Instruments Trading Act (1991:980) (Sw. lag (1991:980) om handel med finansiella instrument). Accordingly, the offering of interests in the Fund will only be directed to persons in Sweden who subscribe to interests in the Fund for a total consideration of at least €100,000 per investor.

SWITZERLAND

Under the Collective Investment Schemes Act dated June 23, 2006 and revised on September 28, 2012 (the "CISA"), the offering, sale and distribution to non-qualified investors of units in foreign collective investment schemes in or from Switzerland are subject to authorization by the Swiss Financial Market Supervisory Authority ("FINMA") and, in addition, the distribution to certain qualified investors of interests in such collective investment schemes may be subject to the appointment of a representative and a paying agent in Switzerland. The concept of "foreign collective investment scheme" covers, inter alia, foreign companies and similar schemes (including those created on the basis of a collective investment contract or a contract of another type with similar effect) created for the purpose of collective investment, whether such companies or schemes are closed end or open end. There are reasonable grounds to believe that the Fund would be characterized as a foreign collective investment scheme under Swiss law. As interests in the Fund have not been and cannot be registered with or authorized by FINMA for distribution to non-qualified investors, any offering of interests in the Fund, and any other form of solicitation of investors in relation to the Fund (including by way of circulation of offering materials or information, including this Memorandum), must be restricted to investors considered as qualified investors within the meaning of the CISA and its implementing regulations. Failure to comply with the above-mentioned requirements may constitute a breach of the CISA.

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UNTIED ARAB EMIRATES

By receiving this Memorandum, the person or entity to whom it has been issued understands, acknowledges and agrees that neither this Memorandum nor the interests in the Fund have been approved, disapproved or passed on in any way by the Central Bank of the United Arab Emirates ("UAE"), the UAE Securities and Commodities Authority (the "SCA") or any other authority in the UAE, nor has the entity conducting the placement in the UAE received authorization or licensing from the Central Bank of the UAE, the SCA or any other authority in the UAE to market or sell interests in the Fund within the UAE. The SCA accepts no liability in relation to the Fund and is not making any recommendation with respect to an investment in the Fund. No services relating to the interests in the Fund including the receipt of applications and/or the allotment or redemption of such interests have been or will be rendered within the UAE by the Fund. Nothing contained in this Memorandum is intended to constitute UAE investment, legal, tax, accounting or other professional advice. This Memorandum is for the information of prospective investors only and nothing in this Memorandum is intended to endorse or recommend a particular course of action. Prospective investors should consult with an appropriate professional for specific advice rendered on the basis of their situation. No offer or invitation to subscribe for interests or sale of interests in the Fund has been or will be rendered in, or to any persons in, or from, the Dubai International Finance Centre.

UNITED KINGDOM

In the United Kingdom, this Memorandum is being distributed only to and is directed only at (i) persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order"), (ii) high-net-worth entities falling within Article 49(2) of the Order, and (iii) any other persons to whom it may otherwise lawfully be communicated (all such persons together being referred to as "relevant persons"). Persons who are not relevant persons must not act on or rely on this Memorandum or any of its contents. Any investment or investment activity to which this Memorandum relates is available only to relevant persons and will be engaged in only with relevant persons. Recipients must not distribute, publish, reproduce, or disclose this Memorandum, in whole or in part, to any other person.

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7. What is the difference between money laundering and terrorist financing?

In contrast to money laundering, which involves the disguising of funds derived from illegal activity so they may be used without detection of the illegal activity, terrorist financing can involve the use of legally derived money to carry out illegal activities. The objective of money laundering is financial gain or the hiding or disguising of illicit proceeds, whereas with terrorism, the objective is to promote the agenda or cause of the terrorist organization. For example, it is widely believed that the terrorist activities of September 11, 2001, were partially financed by legally obtained funds that had been donated to charities. Both money launderers and terrorists, however, do need to disguise the association between themselves and their funding sources.

8. Is the approach to combat money laundering and terrorist financing the same?

Although some of the risk factors and red flags that apply to other types of money laundering also may apply to terrorist financing, the patterns of activity tend to be very different. Terrorist financing often involves very small amounts of funds, which may be moved through charities or nontraditional banking systems, whereas other types of money laundering may involve large volumes of funds. It is important to understand the different patterns to protect against the risks.

Overview of U.S. AML Laws and Regulations

9. What are the key U.S. AML laws and regulations?

The key U.S. AML laws and regulations are the Bank Secrecy Act of 1970 (BSA) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (commonly referred to as the USA PATRIOT Act).

The BSA was the first major money laundering legislation in the United States. It was designed to deter the use of secret foreign bank accounts and provide an audit trail for law enforcement by establishing regulatory reporting and recordkeeping requirements to help identify the source, volume and movement of currency and monetary instruments into or out of the United States or deposited in financial institutions. For additional guidance on the Bank Secrecy Act, please refer to the Bank Secrecy Act section.

The USA PATRIOT Act was signed into law by President George W. Bush on October 26, 2001, following the terrorist activity of September 11. Title III, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, deals with money laundering and terrorist financing. Title III made significant changes to money laundering regulations, imposed enhanced requirements for AML programs, and significantly expanded the scope of coverage to nonbank financial institutions. It requires financial institutions to establish AML programs that include policies, procedures and controls, designation of a compliance officer, training, and independent review. It also requires, among other things, that certain financial institutions establish customer identification procedures for new accounts as well as enhanced due diligence (EDD) for correspondent and private banking accounts maintained by non-U.S. persons. For additional guidance on the USA PATRIOT Act, please refer to the USA PATRIOT Act section.

10. What other AML laws have been enacted in the United States?

In addition to the BSA and Title III of the USA PATRIOT Act, other AML laws include the Money Laundering Control Act of 1986 (MLCA), the Anti-Drug Abuse Act of 1988, the Annunzio-Wylie Anti-Money Laundering Act of 1992, the Money Laundering Suppression Act of 1994 (MLSA), and the Money Laundering and Financial Crimes Strategy Act of 1998.

The MLCA established two AML criminal statutes that, for the first time, made money laundering a criminal offense, with penalties of up to 20 years and fines of up to $500,000 for each count. Additionally, the MLCA prohibits the structuring of currency transactions to avoid filing requirements and requires financial institutions to develop BSA compliance programs.

The primary purpose of the Anti-Drug Abuse Act of 1988 was to provide funding and technical assistance to state and local units of government to combat crime and drug abuse. This Act increased the civil and criminal penalties for money laundering and other BSA violations to include forfeiture of any property or asset involved in an illegal transaction related to money laundering. It introduced the "sting" provision, which enables law enforcement to represent the source of funds involved in a transaction as the proceeds of unlawful activity. This Act also required the identification and recording of purchases of monetary instruments, including bank checks or drafts, foreign drafts, cashier's checks, money orders or traveler's checks in amounts between $3,000 and $10,000 inclusive. This legislation, in conjunction with the Office of National Drug Control Policy (ONDCP) Reauthorization Act of 1998,

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authorized the Director of the ONDCP to designate areas within the United States that exhibit serious drug trafficking problems and harmfully impact other areas of the country as High Intensity Drug Trafficking Areas (HIDTAs). The HIDTA program aims to improve the effectiveness and efficiency of drug control efforts among local, state and federal law enforcement agencies.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 gave protection from civil liability to any financial institution, or director, officer or employee thereof, who/that makes a Suspicious Activity Report (SAR) under any local, state or federal law. The Annunzio-Wylie Act made it illegal to disclose when a SAR is filed. It also made it illegal to operate a money transmitting business without a license where such a license is required under state law, and required all financial institutions to maintain records of domestic and international funds transfers. In addition, this Act introduced the "death penalty," mandating that bank regulators consider taking action to revoke the charter of any banking organization that is found guilty or pleads guilty to a charge of money laundering.

The Money Laundering Suppression Act of 1994 (MLSA) specifically addressed money services businesses (MSBs), requiring each MSB to register and maintain a list of its agents. In addition to making it a federal crime to operate an unregistered MSB, the MLSA encouraged states to adopt uniform laws applicable to MSBs. It also established procedures that allowed banks to exempt certain customers from Currency Transaction Report (CTR) filing.

Continuing with the trend of developing a national strategy to combat money laundering, the Money Laundering and Financial Crimes Strategy Act of 1998 called for the designation of areas at high-risk for money laundering and related financial crimes by geography, industry, sector or institution. Some of these areas were later designated as High Risk Money Laundering and Related Financial Crimes Areas (HIFCAs). The HIFCA program was created to coordinate the efforts of local, state and federal law enforcement agencies in the fight against money laundering.

The Intelligence Reform and Terrorism Prevention Act of 2004 amended the BSA to require the U.S. Treasury Secretary to prescribe regulations requiring certain financial institutions to report cross-border electronic transmittals of funds, if the Secretary determines such reporting is "reasonably necessary" to aid in the fight against money laundering and terrorist financing.

11. What is the role of the Office of Foreign Assets Control (OFAC) and how does it fit into AML laws and regulations?

The purpose of OFAC is to promulgate, administer and enforce economic and trade sanctions against certain individuals, entities and foreign government agencies and countries whose interests are considered to be at odds with U.S. policy. Sanctions programs target, for example, terrorists and terrorist nations, drug traffickers and those engaged in the proliferation of weapons of mass destruction.

Overviews and details of the OFAC Sanctions programs can be found on OFAC's website at www.treas.gov/ofac.

OFAC regulations are not part of AML compliance per se, but since the OFAC Sanctions lists include alleged money launderers and terrorists and USA PATRIOT Act requirements mandate that certain financial institutions vet customer names against the OFAC list, institutions often consider the OFAC program to be a subset of their overall AML program. For additional guidance, please refer to the Office of Foreign Assets Control and International Government Sanctions Programs section.

12. How can one measure the effectiveness of an AML regime?

A number of factors can be considered when assessing the effectiveness of an AML regime, including the number of money laundering/terrorist financing investigations, prosecutions and convictions, number and amount of frozen/seized assets, identification of deficiencies in financial institutions in examinations by regulatory authorities, and quality of coordination among financial institutions, regulatory and law enforcement authorities. For additional guidance on tools and techniques used to assess the effectiveness of AML systems, please refer to the Financial Action Task Force section.

13. How do U.S. regulations compare to international AML regulations?

The United States' role as a leader in the fight against money laundering and terrorist financing dates back 40 years to the passage of the Bank Secrecy Act in 1970. Through the ensuing decades and especially following the terrorist activities of September 11, 2001, the United States has reinforced its commitment through the passage of a number of additional money laundering-related laws, issuance of extensive regulatory guidance and aggressive enforcement.

That said, the United States, as with many other major jurisdictions, is not in full compliance with the FATF Recommendations. In fact, FATF in its most recent assessment of the United States' anti-money regime, identified several areas in need of improvement, including: customer due diligence relating to beneficial owners, authorized

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signers, legal persons and trusts; ongoing due diligence; and general requirements for designated nonfinancial businesses and professions (DNFBPs) (e.g., casinos, accountants, attorneys, dealers in precious metals and stones, real estate agents).

For additional guidance, please refer to the Financial Action Task Force and Mutual Evaluations sections.

For additional guidance on international perspectives, please refer to the International Perspectives and Initiatives section.

14. What are the consequences of not complying with AML laws and regulations?

The consequences of noncompliance with AML laws and regulations may include regulatory enforcement actions, civil and criminal penalties, seizure and forfeiture of funds, and incarceration for the individuals involved. Depository institutions also may be subject to restrictions on growth and expansion and, in the extreme, may have their charters/licenses revoked, a consequence known as the "death penalty." For additional guidance, please refer to the Enforcement Actions section.

15. What factors are considered by law enforcement when it assesses whether an institution or its personnel are guilty of aiding and abetting money laundering or terrorist financing?

When assessing whether an institution or its personnel are guilty of aiding and abetting money laundering or terrorist financing, the authorities consider, among other factors, the following "standards of knowledge":

- **Reckless Disregard –** Careless disregard for legal or regulatory requirements and sound business practice
- **Willful Blindness –** Deliberate ignorance and failure to follow up in the face of information that suggests probable money laundering or illicit activity
- **Collective Knowledge –** Aggregates/attributes the knowledge of employees to the employing company

It is important to remember that under U.S. law, a company may, in general, be held liable for the actions of its employees, regardless of the number or level of employees involved in the wrongdoing.

Overview of the U.S. Regulatory Framework

Key U.S. Regulatory Authorities and Law Enforcement Agencies

16. Who has the authority to assess penalties for violations of AML laws and regulations?

Authority to assess civil penalties rests with the Secretary of the Treasury and is delegated to the Financial Crimes Enforcement Network (FinCEN) and the primary federal regulators or Self-Regulatory Organizations (SROs) (e.g., Financial Industry Regulatory Authority [FINRA]). Some state regulatory agencies have their own authority to assess civil penalties, as well. Criminal penalties are determined through legal proceedings at state or federal levels. The Department of Justice (DOJ) can bring criminal and civil actions, as well as forfeiture actions.

17. Who are the primary federal banking regulators and what are their responsibilities?

The five federal banking regulators include:

- **The Board of Governors of the Federal Reserve System (FRB)** oversees state-chartered banks and trust companies that belong to the Federal Reserve System, financial holding companies, bank holding companies (BHC) and thrift holding companies.
- **The Federal Deposit Insurance Corporation (FDIC)** regulates federally charted banks (e.g., state-chartered banks that do not belong to the Federal Reserve System) as well as state-chartered thrifts.
- **The Office of the Comptroller of the Currency (OCC)** regulates federally chartered banks (e.g., banks that have the word "National" in or the letters "N.A." after their names as well as federal thrifts).
- **The National Credit Union Administration (NCUA)** regulates federally chartered credit unions.

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- **Consumer Financial Protection Bureau (CFPB):** Established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), the CFPB is a federal regulator charged with regulating consumer protection for financial products and services.

Other regulatory bodies were authorized by the Dodd-Frank Act, but their mandates deal more specifically with broad prudential considerations and consumer protection.

18. What is the Federal Financial Institutions Examination Council (FFIEC)?

The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards and report forms, and to make recommendations to promote uniformity in the supervision of financial institutions. Council members include the four federal regulators: FRB, FDIC, OCC, NCUA, and the State Liaison Committee (SLC). The SLC includes representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS).

19. Who are the key nonbanking regulatory agencies?

Nonbanking regulatory agencies include but are not limited to:

- **Securities and Exchange Commission (SEC):** The SEC is the federal regulator of the securities markets and administers the federal securities laws (including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940 and the Trust Indenture Act of 1939), with direct regulatory and oversight responsibilities of securities exchanges, securities brokers and dealers, investment advisers and investment companies, and self-regulatory organizations (SROs).
- **Commodity Futures Trading Commission (CFTC):** The CFTC is the federal regulator of U.S. commodity futures and options markets in the United States. It administers and enforces the federal futures and options laws as set forth in the Commodity Exchange Act (CEA) and the accompanying regulations.
- **Financial Industry Regulatory Authority (FINRA):** Formerly known as the National Association of Securities Dealers (NASD), FINRA is an SRO for broker-dealers.
- **Consumer Financial Protection Bureau (CFPB):** Established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), the CFPB is a federal regulator charged with regulating consumer protection for financial products and services.
- **National Futures Association (NFA):** The NFA is the SRO for the futures market.
- **New York Stock Exchange (NYSE):** The NYSE is the SRO for exchange member organizations (i.e., registered broker-dealer organized as a corporation, a partnership or an LLC that holds an NYSE trading license or opts for NYSE regulation).
- **National Indian Gaming Commission (NIGC):** The NIGC is an independent federal regulatory agency whose primary mission is to regulate gaming activities on Indian lands.
- **IRS Tax Exempt and Government Entities Division (IRS-TEGE):** The IRS-TEGE provides federal oversight to all nonprofit organizations in the United States, including reviews to determine if nonprofit organizations are facilitating terrorist financing.
- **IRS Small Business and Self-Employment Division (IRS-SBSE):** The IRS-SBSE has been delegated examination authority over all financial institutions that do not have a federal functional regulator as defined in the BSA, including MSBs, insurance companies, credit card companies, nonfederally insured credit unions, casinos (tribal and nontribal), and dealers in precious metals, stones and jewels. The IRS-SBSE also has responsibility for auditing compliance with currency transaction reporting requirements that apply to any trade or business (Form 8300).

For further guidance on the AML responsibilities of broker-dealers, money services businesses and other nonbank entities, please refer to the Nonbank Financial Institutions and Nonfinancial Business section.

20. What are the key law enforcement agencies responsible for combating money laundering and terrorist financing?

Key law enforcement agencies responsible for combating money laundering and terrorist financing include:

- Drug Enforcement Administration (DEA)

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- Federal Bureau of Investigation (FBI)
- Department of Homeland Security, Immigration and Customs Enforcement (ICE)
- Department of Homeland Security, Customs and Border Protection (CBP)
- Internal Revenue Service Criminal Investigation (IRS-CI)

21. What are examples of other key agencies with responsibilities to combat money laundering and terrorist financing?

Key agencies with responsibilities to establish policies and strategies to combat money laundering and terrorist financing include, but are not limited to, the following:

U.S. Department of the Treasury

- Office of Terrorism and Financial Intelligence (TFI)
- Office of Terrorist Financing and Financial Crime (TFFC)
- Office of Intelligence and Analysis (OIA-T)
- Financial Crimes Enforcement Network (FinCEN)
- Office of Foreign Assets Control (OFAC)
- Treasury Executive Office for Asset Forfeiture (TEOAF)

U.S. Department of Justice (DOJ)

- Asset Forfeiture and Money Laundering Section, Criminal Division (AFMLS)
- Counterterrorism Section, Criminal Division (CTS)
- National Drug Intelligence Center (NDIC)
- Office of International Affairs, Criminal Division (OIA)

U.S. State Department

- Bureau of Economic and Business Affairs (EB)
- Bureau of International Narcotics and Law Enforcement Affairs (INL)
- State's Office of the Coordinator for Counterterrorism (S/CT)

22. What publications and resources have been provided to the public by U.S. regulatory and/or law enforcement authorities?

Examples of publications and resources include, but are not limited to, the following:

- **FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Handbook –** Provides guidance to examiners for carrying out BSA/AML and OFAC examinations for depository institutions. The manual contains an overview of AML Compliance Program requirements, AML risks (e.g., products, services, transactions and customer types of heightened risk), risk management expectations, industry sound practices and examination procedures. The development of this manual was a collaborative effort of the Federal Reserve, the OCC, the NCUA, the OTS (which has since been dissolved and replaced on the FFIEC by the Consumer Financial Protection Bureau (CFPB), the FDIC and FinCEN to ensure consistency in the application of AML requirements.
- **Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses –** Provides guidance to examiners for carrying out BSA/AML and OFAC examinations for MSBs. The manual contains an overview of AML Compliance Program requirements, risk management expectations, industry sound practices, examination procedures, overviews of the different types of MSBs (i.e., check cashers, currency dealers or exchangers, issuers of traveler's checks and money orders, money transmitters), overview of the relationship between principals and agents, and additional guidance on MSB registration requirements, foreign agent or foreign counterparty due diligence, and recordkeeping and retention requirements for all types of MSBs. The development of this manual was a collaborative effort by the IRS, state agencies responsible for MSB

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regulations, the Money Transmitter Regulators Association (MTRA), the Conference of State Bank Supervisors (CSBS), and FinCEN.

- **Bank Secrecy Act Exam Resources –** Developed by the NCUA, this publication provides guidance to examiners for carrying out AML and OFAC examinations for credit unions.
- **FFIEC Information Technology Examination Handbook –** Developed through a collaborative effort of the Federal Reserve, the OCC, the NCUA, the CFPB and the FDIC, the IT Examination Handbook covers key technology topics as they relate to financial services in separate booklets, including:
    - Audit
    - Operations
    - Management
    - Business continuity planning
    - Outsourcing technology services
    - Development and acquisition
    - Retail payment systems
    - Wholesale payment systems
    - E-banking supervision of technology service providers
    - Information security

  The IT Examination Handbook provides guidance on topics such as risks and suggested controls on third-party payment processors (e.g., Automated Clearing House [ACH] providers, remote deposit capture [RDC] providers) and electronic payments (e.g., electronic banking, automated teller machine [ATM]).
- **Anti-Money Laundering (AML) Source Tool for Broker-Dealers –** Developed by the SEC to assist broker-dealers with fulfilling their responsibilities to establish an AML Compliance Program, as required by AML laws and regulations.
- **Template for Small Firms –** This template, available on FINRA's website, is designed to assist small firms in fulfilling their responsibilities to establish an AML Compliance Program, as required by the BSA and its implementing regulations and FINRA Rule 3310, by providing text examples, instructions, relevant rules, websites and other resources.
- **Compliance Self-Assessment Guide –** Developed by the NCUA, this guide is intended for use by a credit union's board of directors and management, compliance officers, and others having responsibility for compliance as part of their duties. While the guide covers most federal consumer protection laws and regulations that affect credit unions, it does not address all federal laws or any state laws.
- **AML e-learning courses –** FINRA offers several e-learning courses and interactive scenarios on AML-related topics, ranging from customer identification procedures to recognizing red flags.
- **U.S. Money Laundering Threat Assessment (MLTA) –** Published in 2005, the MLTA was written by the following agencies, bureaus and offices:
    - Office of Terrorist Financing and Financial Crime (TFFC)
    - Financial Crimes Enforcement Network (FinCEN)
    - Office of Intelligence and Analysis (OIA)
    - Office of Foreign Assets Control (OFAC)
    - Executive Office for Asset Forfeiture (TEOAF)
    - Internal Revenue Service (IRS) – Criminal Investigation (CI)
    - IRS – Small Business/Self-Employed Division (SB/SE)
    - Federal Bureau of Investigation (FBI)
    - Drug Enforcement Administration (DEA)
    - Asset Forfeiture Money Laundering Section (AFMLS)

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- National Drug Intelligence Center (NDIC)
- Organized Crime Drug Enforcement Task Force (OCDETF)
- Immigration and Customs Enforcement (ICE)
- Customs and Border Protection (CBP)
- Federal Reserve
- United States Postal Inspection Service (USPIS)

The MLTA contains detailed analyses of money laundering vulnerabilities across banking, insurance, casinos and MSBs including, but not limited to, the following:

- Banking (e.g., correspondent banking, cash letters/pouch activities, private banking, online banking, remote deposit capture [RDC])
- MSBs (e.g., provision of check cashing, money transmission, prepaid access, monetary instrument, currency exchange services to "noncustomers") and informal value transfer systems (IVTS)
- Emerging electronic and remote payment systems
- Bulk cash smuggling
- Trade-based money laundering (e.g., Black Market Peso Exchange [BMPE], foreign trade zones [FTZs])
- Legal entities (e.g., trusts, shell companies, corporations, limited liability companies)

- **National Money Laundering Strategy (NMLS) –** Written by the U.S. Departments of Homeland Security, Justice, Treasury, and State, as well as by the Federal Reserve, the OCC, and the FDIC, the NMLS was published in 2007 in direct response to the MLTA. Nine key goals were outlined:
  - Continuing to safeguard the banking system
  - Enhancing financial transparency in money services businesses (MSBs)
  - Stemming the flow of illicit bulk cash out of the United States
  - Attacking trade-based money laundering at home and abroad
  - Promoting transparency in the ownership of legal entities
  - Examining anti-money laundering regulatory oversight and enforcement at casinos
  - Implementing and enforcing anti-money laundering regulations for the insurance industry
  - Supporting global anti-money laundering capacity building and enforcement efforts
  - Improving how to measure progress
- **International Narcotics Control Strategy Report (INCSR) –** An annual report issued by the U.S. Department of State that describes the efforts to attack, country by country, all aspects of the international drug trade, as well as chemical control, money laundering and financial crimes.
- **Country Reports on Terrorism –** An annual report, previously known as Patterns of Global Terrorism, issued by the Department of State that provides overviews of terrorist activity in countries in which acts of terrorism occurred, countries that are state sponsors of terrorism, and countries determined by the U.S. Secretary of State to be of particular interest in the global war on terror. The Country Reports on Terrorism also cover major terrorism-related events involving Americans, information on terrorist groups, terrorist sanctuaries, terrorist attempts to acquire weapons of mass destruction, statistical information provided by the National Counterterrorism Center (NCTC) on individuals killed, injured or kidnapped by terrorist groups, and bilateral and multilateral counterterrorism cooperation.

For additional guidance issued by key international groups, please refer to the Key International Groups and Initiatives section. For details on guidance specific to a particular topic (e.g., Suspicious Activity Reports [SARs], correspondent banking, politically exposed persons [PEPs], trade finance), please refer to the respective sections throughout this publication.

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Financial Crimes Enforcement Network

23. What is the Financial Crimes Enforcement Network, and what is its role in AML regulation?

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department, was established in 1990 by Treasury Order 105-08. Its mission is to safeguard the financial system from abuses of financial crime. It is the Financial Intelligence Unit (FIU) of the United States, formed to support law enforcement and the financial community in the fight against money laundering, terrorist financing and other financial crimes through the collection, analysis and sharing of BSA information. FinCEN seeks to provide adequate financial intelligence to law enforcement without overburdening the financial community or compromising the privacy of individuals.

The many partnerships of FinCEN are not limited to the United States, but expand internationally to law enforcement, financial institutions and regulatory authorities in foreign countries, as well.

While FinCEN relies primarily on federal functional regulators to examine financial institutions and enforce AML compliance, the regulators look to FinCEN for guidance in the implementation of the BSA and USA PATRIOT Act. FinCEN has issued regulations, in concert with federal functional regulators and the Internal Revenue Service (IRS), related to BSA and AML compliance. FinCEN may issue enforcement actions for violations of the BSA and USA PATRIOT Act through its Office of Enforcement jointly or unilaterally. The Office of Enforcement evaluates enforcement matters, including the assessment of civil money penalties.

24. In what types of initiatives does FinCEN engage?

In 1992, as part of the Annunzio-Wylie Anti-Money Laundering Act, FinCEN formed the Bank Secrecy Act Advisory Group (BSAAG), a task force established to coordinate and inform the financial community about BSA-related matters. The BSAAG includes senior representatives from financial institutions, federal law enforcement agencies, regulatory agencies, and others from the public and private sectors. In 2009, the Financial Fraud Enforcement Task Force (FFETF) was established as a multi-agency task force with federal, state and local partners to improve efforts to investigate and prosecute significant financial crimes, recover proceeds for victims, and address financial discrimination in the lending and financial markets.

FinCEN also has created several communication systems to facilitate the sharing of information among both domestic and international entities. The BSA E-Filing System allows financial institutions to file electronic BSA forms, such as CTRs and SARs, quickly and securely. The Gateway program enables law enforcement agencies and financial industry regulators to have expedited access to BSA records filed with FinCEN. The Law Enforcement and Financial Institution Information Sharing (LEFIIS) system allows law enforcement to receive feedback from financial institutions on subjects of money laundering and terrorism investigations, and is used to facilitate information sharing among financial institutions. FinCEN also developed the Egmont Secure Web (ESW), which is a private network that allows connected FIUs to interface with FinCEN and each other to access information related to money laundering trends, analytical tools and technological developments via e-mail.

Additional tools include the Geographic Threat Assessments and Nontraditional Methodologies Sections, a resource center for emerging methods of money laundering and terrorist financing.

FinCEN also collaborates with other FIUs globally to exchange information supporting AML and counterterrorism initiatives worldwide, and assists other countries with developing their FIUs. For additional guidance on FIUs, please refer to the Key International Groups and Initiatives section.

25. What resources has FinCEN provided to the public?

Among the issuances and resources provided by FinCEN are the following:

- **Statutes and Regulations –** Resource that contains links to BSA and USA PATRIOT Act statutes and codified regulations.
- **Federal Register Notices –** Links to final regulations issued after the date of codification as well as Notices of Proposed Rulemaking (NPRs) in the Federal Register.
- **Guidance –** Clarification of issues or responses to questions related to FinCEN regulations (e.g., completion and filing of Suspicious Activity Reports [SARs]; applicability of the definition of a money services business [MSB] to a particular business activity; applicability of the Safe Harbor provision when sharing SARs under certain circumstances).

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- **Administrative Rulings –** Rulings that provide a new interpretation of the BSA or any other statute granting FinCEN authority, express an opinion about a new regulatory issue, and/or outline the effect of the various releases on covered financial institutions.
- **Advisories/Bulletins/Rulings/Fact Sheets –** An archive of advisories, advisory withdrawals, bulletins, rulings and fact sheets dating back to 1996.
- **Answers to Frequently Asked Bank Secrecy Act (BSA) Questions –** A list of basic questions and answers about BSA and USA PATRIOT Act laws and regulations.
- **Reports and Publications –** Reports published periodically on key regulatory issues and strategies to address these issues including, but not limited to, the following:
    - **The SAR Activity Review: "Trends, Tips & Issues" –** A publication produced approximately once or twice each year by FinCEN in cooperation with many regulatory, law enforcement and industry partners. The publication gives the public information and insight concerning the preparation, use and value of SARs filed by institutions.
    - **The SAR Activity Review: "By the Numbers" –** A publication that is generally produced twice each year as a companion to The SAR Activity Review: "Trends, Tips & Issues" and provides numerical data on SAR filings.
    - **Financial Institutions Outreach Initiative –** Reports sharing information gathered through various outreach initiatives with representatives in the financial industry (e.g., large depository institutions, MSBs).
    - **Strategic Analytical Reports and Other Publications –** Publications addressing other trends and issues, such as Mortgage Loan Fraud: An Update of Trends Based upon an Analysis of Suspicious Activity Reports (April 2008).
    - **Annual Report –** Provides an overview of FinCEN's current state and details the strategies and outcomes of the year's operations.
    - **Report to Congress –** An archive of reports made to Congress by the U.S. Secretary of the Treasury dating back to 2002, including the required annual 361(b) report.
    - **The Strategic Plan –** Published periodically, the Strategic Plan details how FinCEN intends to achieve its current goals in the near future.
- **Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses –** Guidance on the examination process of MSBs, in English and Spanish.
- **Enforcement Actions –** Links to enforcement actions dating back to 1999.
- **Law Enforcement –** A summary of support services for law enforcement and links to law enforcement case examples that have been assisted by information reported under BSA regulations.
- **News Releases –** An archive of important FinCEN news releases dating back to 1994.
- **Speeches –** An archive of speeches given by the director of FinCEN dating back to 2004.
- **Testimony –** An archive of testimony given by the director of FinCEN dating back to 2004.

26. How does FinCEN interact with banking and securities regulators?

In 2004, FinCEN entered into a Memorandum of Understanding (MOU) with federal banking regulators. The MOU sets forth procedures for the administration of the BSA, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332; information relating to the primary federal regulators' policies and procedures for examination of BSA compliance; significant BSA compliance issues at banking organizations supervised by the regulators; and analytical data based on or derived from information provided by the regulators. The MOU also gives FinCEN authority to issue its own enforcement actions, even when regulators may not think it is necessary. On April 26, 2005, FinCEN and the New York State Banking Department entered into a similar MOU; shortly thereafter, a number of other states followed suit.

In late 2006, the SEC and FinCEN entered into an MOU under which the SEC provides FinCEN with detailed information on a quarterly basis regarding the AML examination and enforcement activities of the SEC and the Self-Regulatory Organizations (SROs). In return, FinCEN provides assistance and analytical reports to the SEC.

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In June 2011, FinCEN entered into an MOU with the Consumer Financial Protection Bureau (CFPB), which provides the CFPB direct electronic access to BSA information and analytical materials (e.g., analytical tools, BSA information reviews, etc.) as required and appropriate for the exercise of the CFPB's regulatory authority. In return, the CFPB, upon request, will provide reports on the results of its investigations or examinations and statistical information related to any inquiries to assist FinCEN in understanding and analyzing the value of BSA information.

Enforcement Actions

27. What types of enforcement actions are available to regulators for addressing AML Compliance Program deficiencies and violations?

Regulators have a range of enforcement tools available to address AML Compliance Program deficiencies and violations of AML laws and regulations.

While enforcement actions against nonbanks have increased in recent years, the number of enforcement actions issued by bank regulators continues to outnumber those of other agencies, at least in the United States. Examples of enforcement actions available to U.S. bank regulators in order of severity are:

- **Commitment Letter**: A Commitment Letter is an agreement between a bank's board of directors and a bank regulator in which the board, on behalf of a bank, agrees to take certain actions to address issues or concerns surfaced by the regulator. A Commitment Letter is not legally binding, but the failure of a bank to live up to the terms of the Commitment Letter may subject the bank to more formal regulatory action.
- **Memorandum of Understanding**: A Memorandum of Understanding (MOU) is an agreement between a bank's board of directors and one or more regulatory agencies. The content of an MOU may be similar or identical to more formal enforcement actions, but MOUs are nonpublic documents and, similar to Commitment Letters, not legally binding.
- **Formal Agreements**: A Formal Agreement is an agreement between a bank's board of directors and one or more regulatory agencies. While the contents of a Formal Agreement may mirror those of an MOU, violations of a Formal Agreement can provide the legal basis for assessing civil money penalties (CMPs) against directors, officers and other institution-affiliated parties.
- **Consent Order or Order to Cease and Desist (C&D)**: Consent Orders and Orders to Cease and Desist are agreements between a bank's board of directors and one or more regulatory agencies. Violations of a Formal Agreement can provide the legal basis for assessing civil money penalties (CMPs) against directors, officers and other institution-affiliated parties. The regulator's decision to issue a Consent Order or Order to Cease and Desist rather than a formal agreement is based on its assessment of the severity of the bank's problems.
- **Civil Money Penalties (CMPs)**: Civil money penalties are financial penalties that may be imposed by a regulator against a bank or an individual(s) for a violation of law or regulation or noncompliance with a formal enforcement action.
- **"Death Penalty"**: Under the Annunzio-Wiley Act of 1992, bank regulators have the option – in fact, are obligated to consider – whether the license/charter of a depository institution that is found guilty or pleads guilty to money laundering charges should be revoked. The revocation of a license/charter is known as the "Death Penalty."

Unlike the formal enforcement actions issued by bank regulators, which are usually very prescriptive as to the actions that must be taken to address the identified deficiencies, the enforcement actions taken by securities and futures/commodities regulators generally report findings that detail the nature of the deficiency, but do not prescribe specific corrective action (and accompanying fines have been modest compared to those levied against banks).

28. Does FinCEN have enforcement authority?

FinCEN does have enforcement action authority, which it often uses in conjunction with a financial institution's functional regulators.

29. Beyond the actions and penalties that may be imposed by regulators, are U.S. companies subject to any other potential actions?

Yes. Other actions, such as Deferred Prosecution Agreements (DPA), may result from legal actions.

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30. What is a Deferred Prosecution Agreement?

A DPA is an agreement entered into between a prosecutor and a defendant in a criminal case whereby in exchange for successful completion of agreed-upon commitments, the criminal charges against the defendant will be dismissed in their entirety by the prosecutor.

31. What enforcement actions have had a significant impact on the AML landscape?

Certain enforcement actions stand out because of the size of the penalties imposed on the institutions and/or the media attention they received. Examples would include:

- Banking Organizations:
  - **ABN Amro**: In December 2005, ABN Amro was assessed an $80 million Civil Money Penalty (CMP) for failure to implement an adequate system of internal controls reasonably designed to assure compliance with U.S. AML laws and regulations. The CMP cited deficiencies within the North American Regional Clearing Center (NARCC), a unit within the New York Branch of ABN Amro that operated as a clearing center for funds transfers in U.S. dollars for members within the ABN Amro network and more than 400 third-party financial institutions. Specific findings included the following:
    - Failure to staff the compliance function and train compliance personnel adequately
    - Failure to file accurate and timely Suspicious Activity Reports (SARs)
    - Lack of formal procedures for collecting and reviewing due diligence and assessing the risks of foreign financial institutions accessing correspondent banking services
    - Lack of adequate monitoring of funds transfers for potentially suspicious activity, particularly funds transfers conducted by financial institutions independent of the ABN Amro network
    - Failure to incorporate information on subjects of previous SAR filings, terminated relationships, and publicly available information on shell companies into its suspicious activity monitoring program
    - Failure to investigate alerts and utilize the capabilities of its automated monitoring software to manage its money laundering and terrorist financing risk effectively
  - **American Express**: In August 2007, American Express International Bank (AEIB) was issued a Cease and Desist (C&D) order and assessed a $20 million CMP and $55 million forfeiture. American Express Travel Related Services Co. (AETRSC) also was assessed a $5 million CMP. Cross-border payment made total effective charges, including forfeiture, $65 million. AEIB provided private banking services to high net worth clients and AETRSC operated as a money services business (MSB). Specific findings included the following:
    - Failure to implement comprehensive customer due diligence (CDD) and enhanced due diligence (EDD) processes
    - Failure to implement effective control measures for bearer shares and other private investment companies (PICs)
    - Failure to adhere to the internal policies for periodic reviews of high-risk accounts
    - Inadequate transaction monitoring system due to data integrity and other problems
    - Inadequate independent testing of the AML Compliance Program
    - Failure to provide adequate oversight of and accountability for the AML Compliance Program by management of AEIB and its parent company, AEB
  - **Wachovia**: In March 2010, the Office of the Comptroller of the Currency (OCC), FinCEN and the U.S. Department of Justice (DOJ) announced that Wachovia Bank, N.A., had agreed to a Deferred Prosecution Agreement with a forfeiture of $110 million with the DOJ, a civil money penalty of $50 million, a C&D with the OCC, and a civil money penalty (CMP) of $110 million with FinCEN. FinCEN agreed its CMP would be satisfied by the payment of the DOJ forfeiture. Specific findings included the following:
    - Failure to implement adequate policies, procedures and controls for bulk cash transactions conducted by high-risk *casas de cambio* and other foreign correspondent banking customers

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- Failure to conduct monitoring of the high volume of monetary instruments through *casas de cambio* and other foreign correspondent customers using Remote Deposit Capture (RDC) service
- Failure to monitor sequentially numbered traveler's checks used by *casas de cambio* and other foreign correspondent customers in a manner compliant with internal policy on these transactions
- Failure to institute appropriate risk-based monitoring of foreign correspondent banking customers – primarily as a result of setting alert parameters based on staffing capacity
- Failure to file timely SARs on several foreign correspondent banking customers
- Failure to report cash structuring activity

- **HSBC:** In October 2010, the Federal Reserve Board announced that it had issued a Cease and Desist Order between HSBC North America Holdings, Inc. (HNAH), New York, New York, a registered bank holding company (BHC), and the Federal Reserve Board. The order requires HNAH to take corrective action to improve its firm-wide compliance risk management program, including its anti-money laundering compliance risk management. Concurrent with the Federal Reserve Board's announcement of its enforcement action, the Office of the Comptroller of the Currency announced its issuance of a Cease and Desist Order against HSBC Bank USA, N.A., McLean, Virginia (HBUS, a subsidiary of HNAH), for violating the Bank Secrecy Act and its underlying regulations.

  HSBC was directed to use its financial and managerial resources as a source of strength for its bank subsidiaries, and in particular HBUS, to ensure that it complies with the OCC Consent Order regarding HBUS' BSA/AML program. It was also directed to "retain an independent consultant acceptable to the [Chicago Federal] Reserve Bank to complete a review of the effectiveness of the firm-wide BSA/AML Compliance Program adopted by HNAH (the 'BSA/AML Review'), and to prepare a written report of findings and recommendations (the 'BSA/AML Report')." In another section of the Order, HNAH was directed to "submit to the [Chicago Federal] Reserve Bank an acceptable written program designed to reasonably ensure the identification and timely, accurate, and complete reporting by HNAH and its subsidiaries of all known or suspected violations of law or suspicious transactions to law enforcement and supervisory authorities, as required by applicable suspicious activity reporting laws and regulations."

  The OCC Order states that the agency found deficiencies in HBUS' BSA/AML Compliance Program – in particular, deficiencies in internal controls for customer due diligence, procedures for monitoring suspicious activity and independent testing. The Order also cited aggravating factors "such as highly suspicious activity creating a significant potential for unreported money laundering or terrorist financing." Specific cited deficiencies included special handling of wire transfers of customers domiciled in countries risk-rated as "standard" or "medium," resulting in limited and ineffective BSA/AML monitoring of two-thirds of the bank's wire activity; failure from 2006 to 2009 to monitor bulk cash transactions with foreign affiliates; failure to perform customer due diligence or enhanced due diligence for its foreign affiliates, inhibiting its assessment of customer risk and the identification of suspicious activity in accounts of those affiliates; failure to address a backlog of suspicious activity alerts (due to inadequate staffing), which caused the bank to file many late SARs; and failure to appropriately designate customers as "high-risk" for BSA/AML monitoring, even when a customer's association with PEPs could harm the bank's reputation. In July 2012, HSBC was the subject of a hearing held by the Senate Permanent Subcommittee on Investigations entitled "U.S. Vulnerabilities to Money Laundering and Terrorist Financing: HSBC Case History."

- **Citibank:** In April 2012, the OCC issued a Cease and Desist Order against Citibank, N.A. for violations of the Bank Secrecy Act (BSA) and underlying regulations. According to the OCC, the order requires the bank to take comprehensive corrective actions to improve its BSA compliance program.

  The compliance program allegedly had deficiencies with respect to internal controls, customer due diligence, the independent BSA and the anti-money laundering audit function, monitoring of its remote deposit capture and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reporting related to that monitoring. These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file suspicious activity reports, and conduct appropriate due diligence on foreign correspondent accounts.

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As part of the Order, the Bank is required to arrange for an independent look back for suspicious activity covering areas (and presumably time frames) to be designated by the bank's Examiner-in-Charge.

- Broker-Dealers:
  - **E*TRADE**: In January 2009, FINRA assessed a $1 million penalty against E*Trade Securities and E* Trade Clearing LLC for failure to implement AML policies and procedures to reasonably detect and report potentially suspicious securities transactions. Alerts triggered in the automated monitoring system were limited to those with money movements, thereby eliminating detection and review of potentially suspicious matched or washed trades. The firms relied upon analysts to monitor high-volume online trading activity for potentially suspicious activity manually, without providing necessary automated monitoring tools.

    Additionally, in July 2008, both firms reached a $1 million settlement with the SEC for failure to document their Customer Identification Program (CIP) and verify the identities of more than 65,000 clients from October 2003 to June 2005.
- Money Services Businesses (MSBs):
  - **Sigue Corporation**: In January 2008, FinCEN assessed a $12 million CMP on Sigue Corporation for failure to implement an effective AML Compliance Program in all four core elements as defined in the USA PATRIOT Act: internal controls, designation of compliance officer/personnel, training, and independent testing. The U.S. Department of Justice assessed a $15 million forfeiture and entered into a Deferred Prosecution Agreement (DPA). Payment of the forfeiture satisfied the FinCEN penalty. Specific findings included the following:
    - Lack of defined roles and responsibilities of the compliance function
    - Failure to implement a risk-based suspicious activity monitoring program commensurate with dollar volume and geographic reach
    - Lack of effective supervision and control over agents (e.g., agents advising customers to structure transactions to evade AML reporting requirements)
    - Failure to investigate alerts in a timely manner
    - Failure to file complete, accurate or timely Suspicious Activity Reports (SARs)
    - Inadequate and untailored training program and/or training program not completed by all employees/agents
    - Inadequate independent testing (e.g., not risk-based, insufficient testing, narrow scope) that failed to identify system problems within the AML Compliance Program
  - From 2010 to 2011, seven MSBs were subject to enforcement actions primarily for failure to register with FinCEN as an MSB. All were acting as independent money transmitters. A summary of findings included the following:
    - Failure to register as an MSB or complete biennial renewals with FinCEN
    - Failure to implement an AML program as required for money transmitters
    - Failure to report potentially suspicious transactions on SARs
    - Structuring currency transactions to evade BSA reporting requirements
    - Conspiracy to commit food stamp fraud

32. What have been the most common deficiencies in AML Compliance Programs?

Some common themes have been:

- **Program Violations**: Overall failures supported by "pillar" violations, i.e., the failure of an institution to address adequately its obligation to designate a qualified AML compliance officer; develop and implement appropriate policies, procedures and controls; provide adequate training; and perform periodic independent testing of its AML Compliance Program.
- **Systemic and Recurring Violations**: Pervasive control breakdowns

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- **Isolated and Technical Violations**: Limited instances of noncompliance that do not threaten overall program effectiveness

Some common problems and issues include, but are not limited to, the following:

- AML compliance officer (as well as other employees) lacks sufficient experience and/or knowledge regarding AML policies, procedures and tools
- Insufficient/inadequate resources dedicated to AML compliance
- Lack of specific and customized training of employees with critical functions (e.g., account opening, transaction processing, risk management)
- Failure to conduct adequate risk assessments (e.g., customer risk assessment, business line risk assessment, OFAC risk assessment)
- Failure to incorporate risk assessments into a transaction-monitoring process, customer acceptance standards, audits, testing or training
- Inadequate Know Your Customer (KYC) procedures (e.g., CIP, CDD and EDD at or after account opening, including inadequate controls over required fields, inadequate methods of obtaining and/or maintaining current information, lack of reporting capabilities over missing information, and lack of verification procedures)
- Poor documentation maintained for investigations that did not lead to SAR filings
- Poor follow-up on SAR actions (e.g., close, monitor)
- Lack of reporting of key SAR information to senior management/board of directors
- Inadequate tuning, validation and documentation of automated monitoring systems
- Overreliance on software to identify transactions for which CTRs and/or SARs must be filed without fully understanding how the software is designed and what information it does/does not capture
- Exclusion of certain products from transaction monitoring (e.g., loans, letters of credit, capital markets activities)
- Lack of timeliness when filing CTRs and SARs (e.g., reports are manually filed via certified mail, and the date postmarked is not noted)
- Lack of or inadequate independent testing of the AML Compliance Program
- Lack of or untimely corrective actions to prior examination or audit findings

To identify potential gaps in a financial institution's AML Compliance Program, regulatory enforcement actions for AML deficiencies against other (similar) financial institutions should be reviewed to identify the specific violations and related action steps. This enables financial institutions to recognize and correct any potential weaknesses of their own before their next regulatory examination.

AML Compliance Program

33. What types of financial institutions are required to comply with AML laws and regulations?

Under the USA PATRIOT Act, the definition of "financial institutions" was expanded to include more than 20 different types of businesses that provide financial services, including, but not limited to, broker-dealers, currency exchangers, insurance companies, trust companies, dealers in precious metals, stones or jewels, and issuers of traveler's checks, money orders or similar instruments.

For additional guidance on the other types of financial institutions now required to comply with AML laws and regulations, please refer to the USA PATRIOT Act and Nonbank Financial Institutions and Nonfinancial Businesses sections.

34. What are the key components of an AML Compliance Program?

Key components of an AML Compliance Program include, but are not limited to, the following:

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- **Designated Compliance Officer –** For further guidance, please refer to the Designation of AML Compliance Officer and the AML Compliance Organization section.
- **Risk Assessments –** For further guidance, please refer to the Enterprise-wide Risk Assessment, Business Line Risk Assessment, Customer Risk Assessment and OFAC Risk Assessment sections.
- **Customer Acceptance and Maintenance Program –** For further guidance, please refer to the Know Your Customer, Due Diligence and Enhanced Due Diligence, Section 326 – Verification of Identification, Section 312 – Special Due Diligence for Correspondent Accounts and Private Banking Accounts and High Risk Customers sections.
- **Large Currency Monitoring and Currency Transaction Report Filing Program –** For further guidance, please refer to the Currency Transaction Reports section.
- **Monitoring, Investigating and Suspicious Activity Report Filing Program –** For further guidance, please refer to the Transaction Monitoring, Investigations and Red Flags and Suspicious Activity Reports sections.
- **Sanctions Program –** For further guidance, please refer to the Office of Foreign Assets Control section.
- **Information Sharing –** For further guidance, please refer to Section 314(a) – Cooperation among Financial Institutions, Regulatory Authorities and Law Enforcement Authorities, Section 314(b) Requirements – Cooperation among Financial Institutions and National Security Letters sections.
- **Recordkeeping and Retention Program –** For further guidance, please refer to the Funds Transfer Recordkeeping Requirement and the Travel Rule, Recordkeeping Requirements for the Purchase and Sale of Monetary Instruments, Form 8300 and Report of Foreign Bank and Financial Accounts sections.
- **Independent Testing –** For further guidance, please refer to the Independent Testing section.
- **Training –** For further guidance, please refer to the AML Training section.
- **Management and Board Reporting –** For further guidance, please refer to the Designation of AML Compliance Officer and AML Compliance Organization section.

It is important to note that not all types of financial institutions are required to have each of the key components listed above. For additional guidance on the AML requirements of nonbank financial institutions, please refer to the Nonbank Financial Institutions and Nonfinancial Businesses section.

35. How can technology be used to support a financial institution's AML program?

Technology can be used, for example, to support:

- **Monitoring for Suspicious Transactions and Facilitating Suspicious Activity Report Filing –** For further guidance, please see the Suspicious Transaction Monitoring and Suspicious Activity Report Filing Software section.
- **Monitoring for Large Currency Transactions and Facilitating Currency Transaction Report Filing –** For further guidance, please see the Large Currency Transaction Monitoring and Currency Transaction Report Filing Software section.
- **Verification of Customer Information (e.g., CIP) –** For further guidance, please see the Customer Verification Software section.
- **Storage of Customer Information (e.g., CIP, EDD) –** For further guidance, please see the Customer Information Database and Customer Risk Assessment Software section.
- **Calculation of Customer Risk Ratings –** For further guidance, please see the Customer Information Database and Customer Risk Assessment Software section.
- **Searching Against Special Lists of Prohibited and/or High-Risk Individuals/Entities** (e.g., Office of Foreign Assets Control [OFAC], 314(a), Subpoenas, Media Searches, Internal "Deny" Lists, Politically Exposed Persons [PEPs]) for Customers and Transactions – For further guidance, please see the Interdiction Software and List Providers sections.
- **AML Training –** For further guidance, please see the Training Software section.
- **Case Management –** For further guidance, please see the Case Management Software section.

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Topics: Is US data as good as it looks? Is Chinese data as bad as it looks? Is European data as bizarre as it looks?

What a diff'rence a day makes. Ever since the ECB gift-wrapped 650 billion Euros for EU banks, the news has been pretty good, particularly in the US. Most of the market's focus is on the US consumer, for the simple reason that US households are the largest single economic force in the world (see table). Even after deconstructing the labor report for signs of false positives[1], the message is clear: US job markets are gradually getting better, and so is spending. The capital position of US banks is in good shape[2], so we expect access to credit to remain easy[3]. A US GDP growth rate of 2.25% is still below trend, but a long way from the unavoidable recession articulated by the ECRI last fall. I agree with those who think the US economy could not withstand a withdrawal of stimulus right now, but I also do not see the Fed actively withdrawing it. Whatever rain dance the Fed is doing to keep inflation low, they better keep doing it.

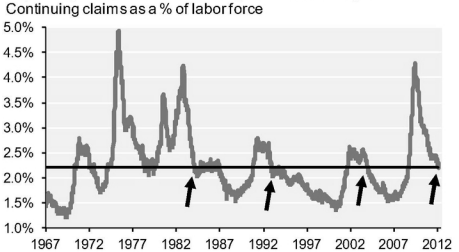
The importance of the US consumer

Billions of USD	Private Consumption	Investment	Gov. Spending	Net exports
US	**10,417**	**1,818**	**3,020**	**(500)**
Asia	**8,231**	**4,614**	**3,449**	**424**
Asia ex. CN/JPN	**2,761**	**597**	**1,482**	**134**
Japan	**3,501**	**1,185**	**1,175**	**58**
China	**1,969**	**2,832**	**792**	**232**
Europe	**9,670**	**3,148**	**3,662**	**130**
EMU	**7,145**	**2,386**	**2,704**	**145**
Latin America	**2,747**	**754**	**1,010**	**28**

Source: Haver. Data as of Q4 2010.

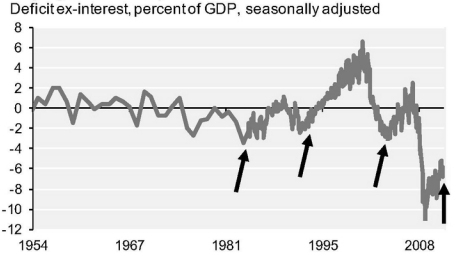
A chart I saw on the history of jobless claims (below, left) was meant to show how good things may get. In the prior 3 business cycles, when continuing claims fell through 2.2% of the labor force (1982, 1993, 2003), it was a great time to add risk in portfolios. Improving claims signaled that the business cycle was picking up enough steam to be self-sustaining, and last week, the US crossed through this barrier again. But as Big Bird used to say, ***one of these things is not like the other:*** **the US primary budget deficit which supports this recovery is a bigger now**. So, the US economy *better* improve markedly in order to pay the freight. When will this chart on the primary deficit (below, right) matter to financial markets? Only when it becomes a binding constraint, either due to a lack of demand to finance the deficit at current yields, or due to the economic cost of closing it. The timing is uncertain, given Central Bank purchases of Treasury bonds, and a Congress which may leave the problem for another day (or generation). I lose a lot of sleep over this, but I don't know a lot of other people that do. As discussed last week, portfolio allocations given today's private and public sector realities vary substantially across wealth management firms. Ours rely on hedge funds, credit and real estate as complements to public and private equity.

In past cycles, claims were a great market signal
Continuing claims as a % of labor force



Source: Department of Labor, BLS, Empirical Research Partners.

Paging Dick Cheney: Do Deficits Matter?
Deficit ex-interest, percent of GDP, seasonally adjusted



Source: CBO, BEA, OMB, J.P. Morgan Private Bank.

[1] Our chief economist Michael Vaknin has analyzed the various seasonal adjustments that the Bureau of Labor Statistics uses when it reports payrolls. After adjusting for better weather, the Lehman shock and other factors, payroll growth does not look quite as good as reported, but is still positive. The trend is supported by the latest Manpower surveys, Institute for Supply Management surveys, JOLTS surveys, etc, all of which show growing demand for labor. Even state and local government firing has finally come to an end, which was a constant fixture of the last two years. So far, hourly earnings remain very weak, and typically do not grow until later in the cycle.

[2] **The latest US bank stress tests were pretty stressful**. Two-year loss assumptions applied by the Fed were higher than those experienced during 2008 and 2009, and comparable in almost every category to realized losses during the Great Depression. Almost every institution passed the test, and even the ones that didn't are expected to reach required capital levels in short order. US banks have sharply reduced reliance on "hot money" (time deposits, commercial paper and repo), relying instead on core retail deposits to finance their balance sheets. Comparing the rigor of US and European bank stress tests is like comparing the rigors of actual football to Wii football.

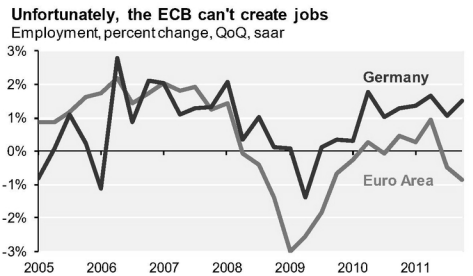
[3] So far, net household borrowing other than student loans is weak; loan growth is almost exclusively from companies rather than households.

HOUSE_OVERSIGHT_024132

Topics: Is US data as good as it looks? Is Chinese data as bad as it looks? Is European data as bizarre as it looks?

There's also some good news on the global profit outlook, or at least an end to the bad news. A measure of global earnings revisions had been running negative for 40 weeks in a row until last week when it turned slightly positive. Other corroborating evidence comes from conversations we've had with private equity firms, whose portfolio companies are generally planning for 10%-20% increases in capital spending budgets this year.

Source: Citigroup, Bloomberg.



Source: Eurostat, Bundesbank.

After four years that challenge some of the basic assumptions of efficient markets and laissez-faire capitalism, there is a pent-up demand for normalcy among individual investors, money managers, CEOs, corporate treasurers, pension funds, regulators, etc. Through massive money creation, Central Banks have provided the veneer of normalcy which has allowed the private sector to get moving again in the US, or at least in the case of Europe, to stop declining. Markets love it. Is the ECB's Mario Draghi a genius? Only time will tell. The last time the term *Maestro* got thrown around, it was a case of premature exaltation.

The latest from Europe: my head is hot and my feet are freezing

Angela Merkel described Europe as being "a good way up the mountain path" regarding the debt crisis. Courtesy of the ECB, there has been a dramatic improvement in sovereign and bank debt markets. However, in the real economy, improvements are much harder to find. In contrast to improving labor markets in the US, Europe still looks pretty bad outside Germany (see chart above; the declining Euro Area line *includes* the better data from Germany). Other variables related to production and consumption show the same regional divergences. The challenge for Spain looks particularly daunting, given a less open economy than countries like Ireland, escalating costs associated with bank recapitalization and municipal funding shortfalls, and the likely continued withdrawal of foreign capital from the private sector. Even with continued German assistance, it's going to be a long and freezing mountain hike for the periphery.

On investments, we saw a lot of things we recognized in a 76-page Morgan Stanley paper on bank deleveraging and real estate. This has been one of our primary investment themes over the last year. **MS estimates 3 trillion Euros of deleveraging by European banks in the next 3-5 years, even *with* ECB repo facilities slowing the pace of asset dispositions, and a more relaxed approach to Basel 3**. Europe's greater reliance on banks to finance commercial property investments (versus capital markets) is a primary driver here. One example: amazingly, Spanish banks have more domestic commercial real estate loans than UK and German banks combined. There are likely to be opportunities in purchasing loan portfolios, and in providing capital to refinance existing loans. In an environment of low growth, perpetual austerity and rising consumer stress, and the lingering possibility of a devaluation in some countries, buyer portfolio discounts need to be large enough to make sense.

Where is China heading?

There is a roiling epistemological debate as to whether China's current decline is structural or cyclical. As an aside, two of JP Morgan's investment banking analysts (one an economist, the other an equity market strategist) have taken opposite sides of the debate, which is in and of itself a healthy thing. Like the question about whether Italy has a liquidity crisis or a solvency crisis, the answer depends on your definition, and definitions can change depending on how governments respond. On the following page, we include our own China Dashboard we use to track what's going on. Now that we have February data as well as January and can adjust for some of the New Year effects, it's pretty clear that China is slowing. Markets are still nervous, since Premier Wen stated that the government is still concerned about elevated home prices, and that they will continue tight policies on property markets. Home price to income ratios in some major cities exceed peak 2006 California levels.

But with the collapse in Chinese inflation, the government has room to re-stimulate a bit. Recently, the Chinese government has injected more liquidity; expanded the quota for foreign equity investment; cut bank reserve requirements; delayed tighter capital

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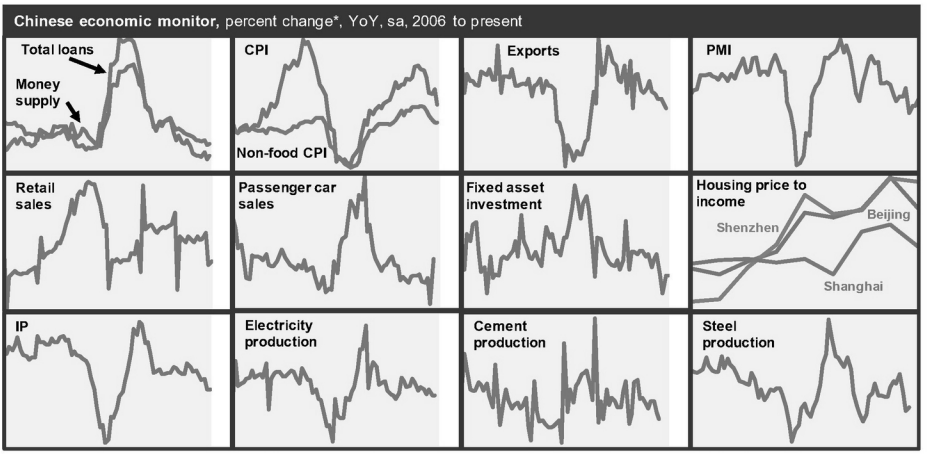
Topics: Is US data as good as it looks? Is Chinese data as bad as it looks? Is European data as bizarre as it looks?

adequacy rules; created a program through which municipalities can issue bonds with government guarantees (rather than having to borrow from banks); eased first time homebuyer restrictions; and injected capital into its biggest banks. **What the China debate is really about is whether these measures will reinvigorate growth or not.** Since much of the recent slowdown was self-imposed due to inflation concerns, it seems reasonable to us to expect the Chinese economy to respond positively to stimulus should it be reapplied. **We are not big buyers of Chinese onshore equities for reasons we have explained before, but we do rely on 7%-8% Chinese GDP growth to fuel economic activity in Asia that underpins many of our investments there. As things stand now, we see no reason why this growth target will not be achieved.**



Source: National Bureau of Statistics, PBOC, China Automotive Information, China Economic Information Network, CLSA-Markit, Haver Analytics. J.P. Morgan Securities LLC, ISI Group, J.P. Morgan Private Bank. * PMI data are index level. Housing price to income, cement production and steel production are as of Dec. 2011. All the other data are as of Feb. 2012.

Michael Cembalest
Chief Investment Officer

"*What a diff'rence a day makes*", Dinah Washington, 1959, Mercury Records

"*Banks Deleveraging and Real Estate*", Morgan Stanley Research, Francesca Tondi, March 15, 2012

The ECRI (Economic Cycle Research Institute) claims papal infallibility on its historical recession predictions. ECB = European Central Bank. EMU = European Economic and Monetary Union

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UBS CIO Monthly Extended

July 2012

Published
29 June 2012

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Section 1

Base slides

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Summary

"With the global economy continuing to muddle through, we believe that US corporate bonds offer the best risk return."

- **Economy**
  The successful formation of a Greek government after the June 17 elections has reduced the risk of an imminent Greek exit from the Eurozone. However, the Euro debt crisis persists, and further reform and consolidation efforts in Spain and Italy are needed. In the US, economic data weakened recently, but it remains in line with our forecast of moderate growth of around 2% in 2012. The Fed extended "Operation Twist" until the end of the year and is ready to do more if the economic situation deteriorates materially. Meanwhile, Chinese activity data is showing signs of stabilization and inflation remains low. We expect the Chinese economy to gradually pick up in the second half of 2012.
- **Equities**
  Despite our relatively positive outlook for US and Chinese economic growth, ongoing Eurozone issues keep us neutral on global equities. We think US companies are better positioned than their European peers, and thus keep our longer-standing preference for US equities. US earnings are relatively robust and the recovery of the domestic economy continues to support revenues. Furthermore, we keep a moderate overweight in emerging market (EM) equities as valuations are attractive and we expect growth to accelerate in the second half of the year. In the near term EM currency weakness remains a risk factor.
- **Fixed Income**
  High grade government bond yields remain extremely low due to ultra-expansive monetary policy and ongoing investor concerns over global growth. While we expect yields to only rise very gradually in the near term, we continue to see better investment opportunities in other fixed income segments. US high yield remains our favorite asset class, given attractive valuations and a favorable default outlook. We also keep our overweight recommendations on investment grade and EM bonds.
- **Commodities**
  We avoid broad commodity exposure as we see further price weakness ahead. While the worst of the oil sell-off is likely behind us, we see no reason for higher prices in the near term and expect roll costs to weigh on positions.
- **Foreign Exchange**
  In light of the ongoing Eurozone troubles, we continue to prefer the US dollar over the euro. We also prefer the Canadian dollar, given its relatively good growth dynamics, a possible rate hike, and relatively high short rates.

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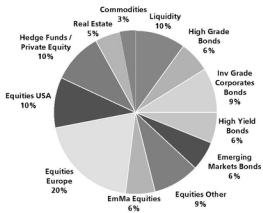
Cross-asset preferences

	Most preferred	Least preferred
Equities	• US • Western winners from EM growth • High quality dividend yields • Event-driven and relative value hedge funds • Natural gas growth gainers	• Europe
Fixed income	• US high yield • Global investment grade credit • Event-driven and relative value hedge funds • EM corporate bonds	• Developed market government bonds
Foreign exchange	• USD • GBP • CAD	• CHF • EUR
Commodities		• Agriculture • Energy

Portfolio weights



Note: Portfolio weights are for an advisory client with a "EUR moderate" profile. For portfolio weights related to other risk profiles please contact your client advisor.

Recent upgrades Recent downgrades

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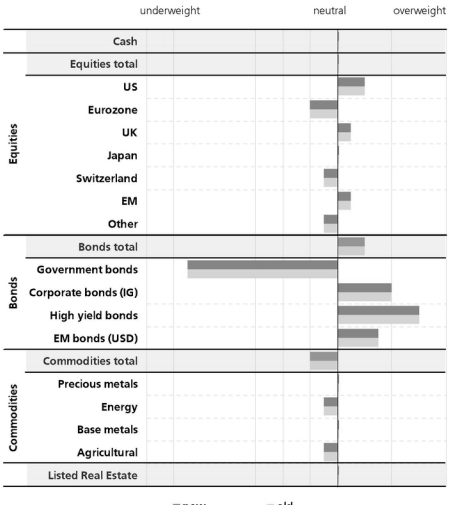
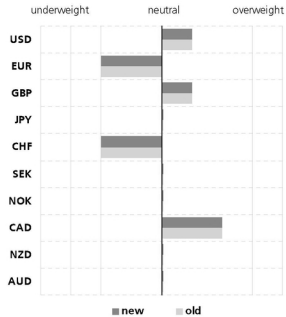
Reference portfolio

Tactical asset allocation deviations from benchmark*



Source: UBS CIO

Currency allocation



* Please note that the bar charts show total portfolio preferences and thus can be interpreted as the recommended deviation from the relevant portfolio benchmark for any given asset class and sub asset class.

Also note that the implementation in advisory or discretionary products might slightly deviate from the "unconstrained" asset allocation shown above, depending on benchmarks, currency positions and for other implementation considerations

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Preferred themes

- **High quality dividend yields (sourced from existing European and UK equities)**
  High quality companies with geographically diversified business models that pay sustainable dividends offer an attractive income stream in a low yield world. Historically, dividends have made a substantial contribution to total returns, and we expect this to remain the case in the current environment.

- **Western winners from emerging market growth (sourced from existing equity holdings)**
  Emerging economies continue to grow faster than developed economies. With little need to deleverage and repair balance sheets, Asian economies are also well positioned to continue to outpace their Western peers in the years ahead. We have identified companies from a variety of sectors in Europe, the US and Japan which have significant exposure to the rapidly growing emerging regions. We believe a diversified portfolio of these companies will reward investors seeking to profit from the robust demand growth in emerging economies.

- **Natural gas growth gainers**
  Natural gas is a relatively clean source of energy, and we think it will benefit from continued substitution for other energy sources over the long term. We have examined the dynamics of the global market and the various components of the gas value chain, and identified the areas we see as the most significant beneficiaries currently. These include producers in Europe and Asia, suppliers of infrastructure, services and related machinery, and Master Limited Partnerships (MLPs) in the US, that offer both attractive yields and growth.

- **Government bond alternatives (sourced from government bonds – CIO UW)**
  Developed world government bonds offer a comparatively small cushion against future interest rate hikes and many face increasing credit risk. We expect select bonds of supranational or national agencies, sub-national governments, multinational corporates, and covered bonds to outperform government bonds. We recommend switching out of government bonds into these alternatives.

- **US high yield corporate bonds (sourced from government bonds – CIO UW)**
  Positive economic growth, robust corporate earnings and healthy balance sheets provide support to US high yield corporate bonds. Current yield spreads of roughly 660 basis points still price in a much more dire economic outcome than we expect. Historically, US high yield bonds have delivered similar returns to US equities with lower volatility. We continue to believe that US high yield corporate bonds represent a more favorable risk/return potential than equities and expect total returns of approximately 7% over the next 6 months.

- **The place to be in Hedge Funds**
  Recent economic data has shown signs of improvement, but growth in most developed markets remains muted. In this environment, less directional hedge fund strategies, such as relative value and event driven, should offer above average returns.

- **EM corporates: a growing asset class (sourced from global government bonds – CIO UW)**
  Given our relatively constructive current view on risk, we regard EM corporate debt as more attractive than EM sovereign debt due to its higher overall yield. Over a 6-month horizon, we expect EM corporate bonds to outperform US Treasuries and deliver total returns of close to 8% p.a.

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Global economic outlook – *Summary*

Key questions

- Can emerging markets (EM) continue to offset developed market (DM) weakness to buoy global growth?
- What are the risks of near-term faltering of the US economic recovery?
- When is the European economy likely to return to sustainable economic expansion?

CIO View (Probability: 60%*)

- Global economic activity remains moderate; the growth impulse stems largely (some 80%) from the EM region. As expected, China started to ease monetary policy. The country is better placed than other EM and particularly DM countries to counter growth weakness with further monetary and fiscal stimuli. Thus, we expect EM growth to stabilize soon and pick up in 2H 2012.
- US economic indicators have on balance been disappointing recently, especially data related to business fixed investment and employment growth. Thus, we lowered our 2Q 2012 real GDP growth forecast to an annualized rate of 1.5% from 2%. We still expect growth slightly above 2% in 2H 2012. We think that the risk that the Fed will take measures in addition to the extension of "Operation Twist" is still significant.
- Large parts of Western Europe are in recession or stagnation. We expect the economies of the Eurozone and the UK to show mild improvement in 2H 2012. Still, economic activity is likely to remain very sluggish despite support from lower oil prices and less rigorous fiscal austerity. The Bank of England may support the UK economy by increasing its amount of bond purchases soon. The probability that the ECB will take further action to support the economy has risen significantly.

↗ Positive scenario (Probability: 15%*)

- The Eurozone crisis abates. Financial market conditions recover, mitigating the drag from fiscal austerity.
- Growth in Western Europe is marginally positive (Eurozone stagnates) in 2012 and the US economy grows moderately above trend.

↘ Negative scenario (Probability: 25%*)

- There are three key downside risks to the global economy: 1. a significant escalation of the Eurozone debt crisis; 2. a sharp fiscal contraction in the US, and 3. a sharp deceleration of the Chinese economy. Each one of these risks could precipitate a significant downturn of the global economy.

Key dates

2 July	USA: ISM manufacturing PMI for June
5 July	Eurozone: ECB press conference
24 July	Eurozone: purchasing managers indices (PMI), July estimates
22–25 July	China: HSBC flash manufacturing purchasing managers index (Jul)

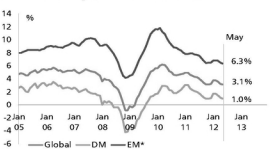
Global growth expected at just under 3% in 2012

		Real GDP growth in %			Inflation in %		
		2011	2012F	2013F	2011	2012F	2013F
Americas	US	1.7	2.1	2.6	3.1	2.1	1.7
	Canada	2.4	2.1	2.4	2.9	2.1	2.3
	Brazil	2.7	2.0	4.8	6.5	5.2	6.5
Asia/Pacific	Japan	-0.7	2.5	2.0	-0.3	0.2	0.5
	Australia	2.1	3.7	3.5	3.4	1.6	2.5
	China	9.2	8.2	8.5	5.4	3.0	4.0
	India	6.5	6.0	7.0	7.8	6.9	7.0
Europe	Eurozone	1.5	-0.4	0.4	2.7	2.3	2.0
	Germany	3.1	1.0	1.1	2.5	1.7	1.5
	France	1.7	0.3	0.4	2.1	2.5	2.2
	Italy	0.5	-1.8	0.2	2.9	3.4	3.9
	Spain	0.7	-1.6	-1.3	3.1	1.9	1.9
	UK	0.7	0.2	1.3	4.5	2.8	1.9
	Switzerland	2.1	1.3	1.7	0.2	-0.4	1.4
	Russia	4.3	3.8	3.7	8.5	4.9	6.9
World		3.2	2.8	3.3	3.9	3.0	3.0

Source: UBS CIO, as of 28 June 2012

In developing the CIO economic forecasts, CIO economists worked in collaboration with economists employed by UBS Investment Research. Forecasts and estimates are current only as of the date of this publication and may change without notice.

Global economic momentum is deteriorating (UBS GDP tracker)



Source: Bloomberg, UBS CIO, as of 22 June 2012

* DM= developed markets, EM = emerging markets

Note: Past performance is not an indication of future returns.
**Scenario probabilities are based on qualitative assessment.

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For further information please contact CIO economist Dirk Faltin, dirk.faltin@ubs.com

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Key financial market driver 1 – *Eurozone crisis*

Key questions

- What is the way forward for Eurozone banks?
- What is the most likely course of events in Spain, Italy and Portugal?
- In what direction will the economy and the ECB go?

CIO View (Probability: 65%*) **Austerity and weak growth**

- Support for the banking sector is a major political agenda item, and the request for external support for Spanish banks can be seen as the starting point for greater European support and oversight for banks, to be discussed at the upcoming European Council.
- Greece's debt remains unsustainable, but the risk of a euro exit over the next six months has diminished after the 17 June elections, which have produced a viable government coalition. The Troika may only accept moderate adjustments to the second Greek package. Portugal is likely to receive an increased bailout package and is unlikely to default in 2012. Progress on reforms and consolidation in Spain and Italy is most crucial for the near-term development of the crisis. Risk premiums would rise strongly on any failure to meet deficit targets; we expect bond risk premiums to remain elevated for Spain and Italy over the next six months.
- Following stagnation in 1Q 2012, economic surveys are commensurate with a quarterly GDP contraction of around 0.3% at present. Business survey evidence points to a general wait and see mode. The risk to the outlook for a stabilization of economic growth in the second half of 2012 is skewed to the downside. The ECB remains on hold, but the bar to support the economy and markets has been lowered substantially. We see a significant probability of policy action in early July, including the possibility of a rate reduction. Despite all the talk about political measures to support growth and increased tolerance for budget slippages, there is practically no leeway for fiscal stimuli. The near-term growth impact of any fiscal measure will at best be marginal, in our view.

↗ Positive scenario (Probability: 15%*) **Return to macro stability**

- Bond yields are contained, as peripheral countries' budgets stay on track and economic activity recovers faster than expected. Greece fully complies with the austerity plans and receives further support. Market confidence is restored, and economic growth stagnates in 2012.

↘ Negative scenario (Probability: 20%*) **Major shock**

- Major shocks could include Spain being pushed into a full IMF/EU program, possibly by a rating cut to junk, enhancing pressure also on Italy; serious political disagreement in core countries (for instance after Dutch elections, etc.); a possible Portuguese default; a Greek euro exit; or a major external growth shock.

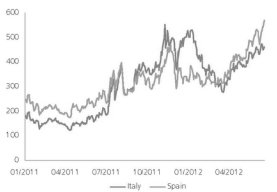
Key dates

5 July	ECB press conference
9–10 July	Eurogroup/ECOFIN-Meeting
24 July	Eurozone purchasing manager indices (PMI), July estimates

Bottoming in Eurozone leading indicators (PMI) in June?

Source: Bloomberg, UBS CIO, as of 21 June 2012 (estimates)

Yield of Spanish and Italian 10-year bonds over German Bunds (in bps)



Source: UBS CIO, Bloomberg, as of 18 June 2012

Note: Past performance is not an indication of future returns.

* Scenario probabilities are based on qualitative assessment.

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Key financial market driver 2 – *US policy*

Key questions

- Will the economic outlook deteriorate? Will QE3 become necessary?
- How will the election outcome change fiscal policy deliberations?
- Can politicians find an agreement to avoid sharp fiscal contraction in early 2013 ("fiscal cliff")?

CIO View (Probability: 65%*) **No QE3, political gridlock and some fiscal tightening**

- The economy stays on a moderate growth path, coupled with stable core PCE inflation close to the Fed's target of 2%. UBS forecasts real GDP growth of 1.5% in 2Q 2012 (consensus: 2.1%) and 2.3% in 3Q 2012 (consensus: 2.4%), with some downside risk due to rising uncertainty. The Fed has decided to extend so called "Operation Twist" until the end of the year. More near-term monetary easing is still possible, but it is currently not our central scenario.
- In the elections, Republicans will likely lose seats in the House overall, but retain a majority; we also expect them to win a narrow majority in the Senate. Obama will likely retain the White House. Such an electoral outcome would confirm the existing gridlock between Republicans and Democrats.
- Against the backdrop of ongoing political gridlock, we expect only moderate fiscal tightening of about 0.9% of GDP in 2013. The government will likely let unemployment benefits and the payroll tax cut expire, but postpone income tax hikes and sequestration spending.

↗ Positive scenario (Probability: 10%*) **No QE3, Democratic sweep and more fiscal tightening**

- Propelled by ultra-expansive monetary policy and improved confidence, cyclical forces surmount the structural hindrances and thus growth accelerates. More rapid growth leads to higher inflation, and the Fed responds by tightening monetary policy sooner.
- The improved economic outlook raises the odds for an Obama re-election and makes it harder for Republicans to win a majority in the Senate. US fiscal consolidation efforts are facilitated by faster rising tax collections. A Democratic stronghold leads to some tax hikes and limited spending cuts. Fiscal policy tightens by about 1.2% of GDP in 2013.

↘ Negative scenario (Probability: 25%*) **QE3, political dysfunction and huge fiscal tightening**

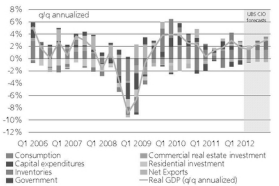
- Structural hindrances dominate and weigh on the cyclical recovery, thus growth weakens or turns negative. The Fed embarks on QE3, most likely in the form of agency MBS and Treasury purchases.
- Weaker economic conditions raise the odds for a larger Republican majority in Congress, but Obama remains President. The debt limit is reached earlier and the Treasury runs out of money before year-end. The political gridlock becomes dysfunctional, thus fiscal policy tightens by USD 600 billion (3.7% of UBS estimate of 2013 GDP) in 2013 ("fiscal cliff"). The US credit rating is downgraded.

Key dates

2 July	ISM manufacturing PMI for June
6 July	Nonfarm payrolls and unemployment rate for June
6 Nov	US Presidential and Congressional elections

US moderate growth to continue

US real GDP and its components, quarter-over-quarter annualized in %



Source: Thomson Datastream, UBS CIO, as of 20 June 2012

US fiscal cliff at year-end 2012

Fiscal effects of change in provisions under current law, USD billion annualized

	1Q13	2Q13	3Q13	4Q13	CY2013
Sequester automatic cuts (discretionary spending)	-60	-68	-76	-76	-70
Sequester automatic cuts (mandatory spending)	-16	-16	-16	-17	-16
2001/2003 tax cuts (250k+ incomes, estate tax)	-38	-58	-58	-65	-55
2001/2003 tax cuts (middle incomes)	-164	-156	-137	-172	-157
Alternative Minimum Tax (incl. interaction with tax cuts)	0	-374	-125	-29	-132
Payroll tax cut	-94	-114	-114	-114	-109
Emergency Unemployment Compensation	-34	-34	-34	-34	-34
Affordable Care Act (3.8%/0.9% tax on passive/wage income 250k+)	-27	-27	-27	-27	-27
Total (all provisions)	-433	-847	-587	-534	-600

Source: Goldman Sachs, UBS CIO, as of 20 June 2012

* Scenario probabilities are based on qualitative assessment.

Note: Past performance is not an indication of future returns.

Key financial market driver 3 – *China growth outlook*

Key questions

- When will the economy bottom out?
- What economic policy responses can we expect to support the economy ahead?
- How significant is the contagion risk from a possible downturn in the Eurozone?

CIO View (Probability: 70%*) **Modest policy easing to support growth in 2H12**

- The latest economic data suggest that economic activity is showing signs of stabilization, albeit at a comparatively low level. However, we have yet to see meaningful pick-up in activity. We think that policy measures to support the economy should have more visible effect on activity in the second half of the year.
- To this effect, the People's Bank of China (PBoC) has recently cut interest rates by 25bps – the first such move since late 2008. With investment demand still sluggish, we don't expect the measure to have a significant near-term effect on growth. Still, the cut confirms the leadership's commitment to support the economy. Importantly, with the rate cut, measures were announced to increase the banks' ability to set interest rates, which should bolster private household spending power in the future.
- The rate reduction took place against a backdrop of falling price inflation. Thus, inflation is no obstacle for further measures to ease monetary policy. However, at this point we don't expect further rate cuts this year; especially since increased interest rate flexibility should contribute to an easing of monetary conditions ahead. If anything, we think the PBoC may implement more reductions in banks' reserve requirement rates to ensure sufficient liquidity provisions. Thus, we think the real focus has to be on the fiscal policy measures now, including possibly an acceleration of infrastructure investments, measures to support consumer spending and selective relaxation in the property market (while keeping home-purchase restrictions intact).

↗ Positive scenario (Probability: 20%*) **Higher-than-expected growth**

- Chinese GDP grows above 8.5% in 2012. For this we would probably need to see stronger-than-expected fiscal and monetary policy support from the government. A speedy improvement in the Eurozone debt crisis could also lead to this positive scenario.

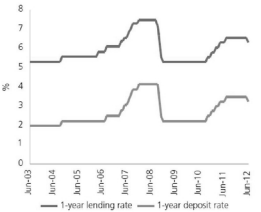
↘ Negative scenario (Probability: 10%*) **Hard landing**

- Chinese GDP growth below 6%, i.e. a hard landing of the economy. This could be triggered by a global financial crisis/recession, causing a slump in Chinese exports. Other risks include a sharp decline in Chinese residential property prices – which would slow investment growth, a large-scale default of local government debt, or a surge in inflation that forces the PBoC to significantly tighten monetary policy.

Key dates

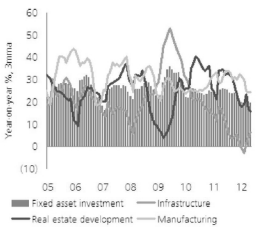
1 Jul	Manufacturing purchasing managers index (Jun)
13 Jul	Fixed asset investment, industrial production (Jun), 2Q12 GDP
11–15 Jul	New bank lending, M2 (Jun)
22–25 Jul	HSBC flash manufacturing purchasing managers index (Jul)

First interest rate cut since 2008



Source: Bloomberg, UBS CIO, as of 18 Jun 2012

Pick-up in infrastructure investment



Source: Bloomberg, UBS CIO, as of 18 Jun 2012

Note: Past performance is not an indication of future returns.

* Scenario probabilities are based on qualitative assessment.

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Section 2

Asset class views

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Section 2.A

Asset class views

Equities

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Equities overview

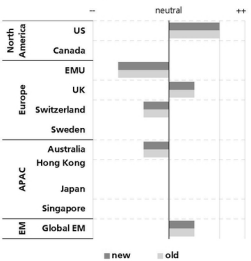
Global equity markets – Key points

- We keep an overall **neutral allocation** to **equities** (see summary on slide 3).
- The **US remains our preferred developed market**. The domestic economy is expected to continue to grow. This should underpin earnings growth for US companies. With labour costs in check, profit margins should stay around the current high levels.
- We **keep our overweight position on EM equities.** Monetary easing in key countries continues, and relatively attractive valuations remain key supporting factors. However, near-term economic and currency weakness remains a major concern for investors – especially those domiciled in hard currency regions (e.g. USD, EUR). Until year-end, we expect some growth acceleration and therefore stay overweight.
- The **UK** remains a **preferred market**. It offers a solid earnings outlook compared to other European markets. Moreover, the valuation is attractive at a trailing P/E ratio close to 10.
- We keep our **negative stance on Eurozone equities**. The economy remains very weak affecting earnings growth negatively. The sovereign debt crisis remains a major risk (see page 8).
- We **remain cautious on Australian equities**. The earnings prospects are still being revised down by analysts. The domestic economy is moving at two speeds with the strong part getting its impulse from the mining sector. We maintain a small underweight.
- We **keep a moderate underweight in Swiss equities**, as valuation looks expensive relative to world equities. The negative earnings impact of the strong Swiss franc should ease further in coming quarters.

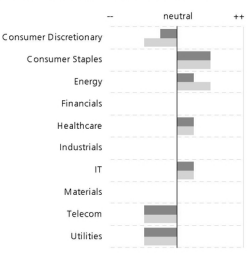
Global equity sectors – Key points

- **Consumer Staples and Healthcare remain preferred** among defensive sectors, as their long-term earnings prospects are very solid. Both sectors also offer strong balance sheets, exposure to favorable demographic trends and emerging markets.
- We keep our **negative view on Telecom and Utilities**. Both sectors suffer from weak revenue growth as well as margin pressure.
- Within cyclical sectors, we **keep our preference for IT** due to a solid earnings outlook and strong corporate balance sheets. Moreover, we **reiterate our neutral allocation to Industrials**.
- Valuations are high and earnings expectations are optimistic for **Consumer Discretionary**. However, we **reduce our Underweight** as we become more positive on the sector in the US.
- Following the latest oil price decline and a good relative performance, we have **reduced our overweight on Energy.** However, the earnings outlook remains solid and valuation is very attractive. While **Materials** are not expensive, we are **neutral**, as margins remain under pressure.
- The earnings outlook for US and Asian Financials is solid, which leads us to be **neutral on Financials from a global perspective.** However, we maintain our underweight on Eurozone Financials, where sovereign indebtedness and bank capitalization remain major concerns.

Preferences (6 months)



Note: Preference in hedged terms (excl. currencies)



Source: UBS CIO, as of 28 June 2012

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Please see important disclaimer and disclosures at the end of the document.

HOUSE_OVERSIGHT_024148

US equities

Preference: overweight

S&P 500 (27 June): 1,332 (last month: 1,319)

UBS View **S&P 500 (6-month target): 1,430**

- US firms on average show more resilient earnings than their global and especially European peers. Modest domestic economic growth supports US companies' revenue and thereby earnings growth. About two thirds of revenues are generated in the US.
- While profit margins are slightly higher than their average over the last 30 years, we expect them to hold up in coming quarters. Pressure from rising wages on margins is rather muted. So company earnings are forecast to develop in line with revenues.
- In the next six months, we forecast the price-to-earnings ratio (P/E) of the S&P 500 to rise to about 14.0x realized earnings from slightly above 13.0x currently.
- The combination of expected moderate earnings growth and an expansion of the valuation multiples make the US one of our preferred equity markets.

↗ Positive scenario **S&P 500 (6-month target): 1,580**

- An accelerating US and global economy reduces risks to company earnings. Investors begin to shift funds into more cyclical sectors such as Industrials and Materials in light of better growth prospects. In this scenario, we would expect earnings to grow by around 10% in the next 12 months, and the trailing P/E multiple to expand to around 15x.

↘ Negative scenario **S&P 500 (6-month target): 1,115**

- The US slides into a recession and corporate earnings fall by around 15% over the coming 12 months. Coupled with an escalation in the Eurozone debt crisis, we would expect the P/E multiple to contract towards 12.0x trailing earnings.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Business sentiment	The ISM is a leading indicator for US manufacturing and services. **Key dates: 2 July, ISM manufacturing; 5 July, ISM non-manufacturing**
The Fed	The direction of monetary policy and hints on further quantitative easing can influence equities. **Key date: 11 July, minutes from June FOMC meeting**
Labor market	Improvement in the labor market is key for domestic consumption. **Key date: 6 July, US labor market report for June**
Earnings reports	Earnings season in the US, with 60% of the S&P 500 companies reporting in July. **Key date: 9 July**, Alcoa, first major earnings report in July

Recommendations

Tactical (6 months)

- We have adopted a neutral allocation between defensive and cyclical sectors.
- Among defensives, we still like Consumer Staples, while IT is a preferred cyclical sectors. We also like Energy.
- We are cautious on Materials, where we expect margin pressure to continue, as well as Telecom and Utilities, due to high valuations.

Strategic (1 to 2 years)

- We like medium-sized US companies, which should benefit from robust earnings growth in the long term (see also slide 21).

Our sector stance in the US

Sectors	US
Consumer Discretionary	→
Consumer Staples	↗
Energy	↗
Financials	→
Healthcare	→
Industrials	→
IT	↗
Materials	↘
Telecom	↘
Utilities	↘

Source: UBS CIO, as of 28 June 2012

Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024149

Eurozone equities

Preference: underweight

Euro Stoxx (27 June): 217 (last month: 215)

UBS View **Euro Stoxx (6-month target): 223**

• The crisis in the Eurozone will remain the main driver in the coming months. After the elections in Greece, progress on the reform program will be closely monitored. Spain and Italy will also remain in the spotlight with levels of government bond yields too high for being sustainable.
• With the sovereign debt crisis dragging on we expect the Eurozone market to stay highly volatile in coming months.
• Economies in peripheral countries increasingly feel the burden of austerity. The economic weakness affects company earnings negatively. Analysts' earnings growth forecasts (consensus) for 2012 have come down to about 3% for this year, but we see this as still too high against the weak economic backdrop.
• All in all, the ongoing risks stemming from the sovereign debt crisis lead us to the view that Eurozone equities will underperform other major markets.

↗ Positive scenario **Euro Stoxx (6-month target): 275**

• Global economic growth reaccelerates and Eurozone growth shows clear signs of bottoming out, enabling 2–4% earnings growth over the rest of the year. The trailing P/E ratio could re-rate to 12x from the current reading close to 10x.

↘ Negative scenario **Euro Stoxx (6-month target): 165**

• Europe slides into a deep recession, and the debt crisis leads to severe pressure on Spain and Italy. In a major crisis, earnings could fall by 10% to 15% from current levels until year-end, and the trailing P/E ratio could drop to 8.5x by the end of 2012.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Growth indicators	Economic growth indicators provide information on the development of a potential Eurozone recession. **Key dates: 2 July, Final PMI manufacturing Eurozone, Germany, France for June; 24 July, Flash PMI Eurozone, Germany, France for July; 25 July, IFO business climate Germany**
Policy action	Decisions by European politicians and the ECB affect the course of the debt crisis. **Key dates: 5 July, ECB meeting**
Earnings season	Earnings reports of the Euro Stoxx companies. **Key dates: Mid July until mid August**

Recommendations

Tactical (6 months)

- We continue to recommend defensive sectors. We like Consumer Staples and Healthcare.
- We also like the Energy sector, where the valuation is very attractive.
- Because of risks stemming from the sovereign debt crisis, we keep a cautious stance on Financials – especially Banks and diversified Financials.

Strategic (1 to 2 years)

- For investors with a multiyear horizon, we believe there are attractively valued opportunities in core Europe (see also slide 21).

Our sector stance in the Eurozone

Sectors	Eurozone
Consumer Discretionary	↘
Consumer Staples	↗
Energy	↗
Financials	↘
Healthcare	↗
Industrials	↗
IT	→
Materials	→
Telecom	↘
Utilities	↘

Source: UBS CIO, as of 28 June 2012

Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024150

UK equities

Preference: overweight

FTSE 100 (27 June): 5,524 (last month: 5,266)

UBS View **FTSE 100 (6-month target): 5,785**

• We continue to like UK equities relative to global ones. An expected improvement in the global economy over the coming quarters should support UK companies as 70% of revenues are generated abroad.

• Energy is the largest sector of the UK market. While the oil price eased sharply over the past months, we expect it to stabilize in the second half of 2012. An attractive valuation of the energy sector at 6.5x trailing earnings provides some buffer for earnings volatility going forward.

• Profitability of UK banks is reasonable. They are less affected by the sovereign debt crisis than their Eurozone peers. While the recent easing of collateral requirements by the Bank of England is supportive in the short-term, the profitability of the domestic operations could be negatively affected by the implementation of the ring-fencing bank reform by 2015.

• UK equities' P/E, at about 10.0x trailing, indicates attractive value relative to global equities. Based on our 12-month forward earnings growth estimate of about 5% and the P/E multiple slightly expanding to 10.3x, we expect UK equities to show good returns over the next six months.

↗ Positive scenario **FTSE 100 (6-month target): 6,650**

• Continued global growth and strong demand from emerging markets should support demand for commodities, helping the Materials and Energy sectors to lead the market higher. The market could re-rate to a P/E multiple of close to 12.0x, and we would expect earnings growth of 5–8% over 12 months.

↘ Negative scenario **FTSE 100 (6-month target): 4,400**

• A global recession drags UK earnings down by 15–20%. The market's defensive characteristics would only partly offset its strong exposure to commodity-related sectors. We would expect the trailing P/E multiple to drop towards slightly below 9x.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Growth indicators	Business survey indicators provide information on the economic development in the UK. **Key date: 2 July, PMI manufacturing for June; 4 July, PMI services for June;**
Commodity prices	Energy and Materials together are about 30% of the UK market by market capitalization. Developments in commodity prices affect earnings estimates.
Policy action	Loose monetary policy by the Bank of England (BoE) supports equities. **Key date: 05 July, Bank of England policy meeting**

Recommendations

Tactical (6 months)

- We like the Energy sector due to attractive valuations; Consumer Staples is another preferred sector Because of its defensive qualities.
- Approaching the end of the patent cliff should remove some uncertainty on the Healthcare sector and enable a re-rating.

Strategic (1 to 2 years)

- As commodity-related sectors, Energy and Materials should benefit from robust demand in emerging markets.
- The UK market's 4% dividend yield provides a good income stream.

UK market trades at a P/E-discount (based on realized earnings)

Source: Thomson Reuters, UBS CIO, as of 21 June 2012

Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024151

Swiss equities

Preference: underweight

SMI (27 June): 5,997 (last month: 5,818)

UBS View **SMI (6-month target): 6,200**

- Swiss listed companies generate a high share of profits in economies outside Switzerland. Consequently, the Swiss equity market is affected by the recent weakening in global growth.
- Swiss companies try to mitigate concerns on the global economic prospects by maintaining tight cost controls. This should allow to maintain relatively robust operating margins in 2012.
- While the Swiss franc remains overvalued, we expect the currency impact to gradually become less of a drag. In fact, at current exchange rates, Swiss companies' earnings would show some positive currency translation effects by end 2012, compared to the previous year.
- Still, the PE-ratio of the market is relatively high compared to the global average, indicating less attractive value. The SMI is trading at about 12.8x realized earnings. We are thus more cautious on the ability of the market to deliver further multiple expansion in a challenging market environment. As a result, we maintain a small underweight stance on Swiss equities.

↗ Positive scenario **SMI (6-month target): 6,900**

- Eurozone economic growth reaccelerates meaningfully, providing relief to Swiss financials as well as Swiss exporters. Defensive sectors would likely be left behind in a relief rally. In this scenario, we would expect the equity market P/E to re-rate to 14x and earnings to grow by 5% over the next six months.

↘ Negative scenario **SMI (6-month target): 5,075**

- The sovereign debt crisis re-escalates, leading to further downside for Swiss financials and the export-focused Industrials and Materials sectors. In this scenario, corporate earnings could drop by 5–10% over the next six months and we would expect the P/E to contract significantly, toward 11.5x.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Economic indicators	Key announcement dates of domestic economic indicators: **2 July, PMI manufacturing; 27 July, KOF Swiss leading indicator**
Monetary and economic policy	Key Swiss/European monetary policy dates that can impact Swiss equities: **2 July, SNB meeting; 5 July, ECB Governing Council meeting**
Corporate results	Key corporate announcement dates that could move the market: **5 July, Barry Callebaut; 12 July, Partners Group; 16 July, Kühne+Nagel; 17 July, Georg Fischer & SGS; 19 July, Actelion; 20 July, Sulzer; 25 July, Rieter & Lonza; 26 July, ABB, CS Group, Logitech & Sika**

Recommendations

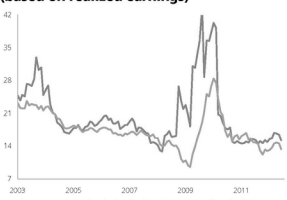
Tactical (6 months)

- We favor companies with a strong and broad foothold in emerging markets, as well as innovative companies able to market their products and services efficiently and globally.
- We continue to favor large caps.

Strategic (1 to 2 years)

- We like stocks paying high and sustainable dividends.
- Moreover, we favor leaders in regards to the two key Swiss success factors: innovation and globalization.

Swiss market trades at a P/E-premium (based on realized earnings)



Source: Thomson Reuters, UBS CIO, as of 25 June 2012

Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024152

Japanese equities

Preference: neutral

Topix (27 June): 745 (last month: 721)

UBS View **Topix (6-month target): 780**

• We expect earnings growth of about 45% over the coming 12 months. This exceptional high growth is mainly due to the two natural disasters last year, as well as tax regulation changes which caused a number of one-time losses to be booked in the fiscal year that ended in March 2012.
• In our base case scenario, we see only limited scope for an additional earnings boost from the local economic recovery, given the slowing in export markets. Japanese companies are expected to continue their cost reduction efforts to counter the impact of a strong yen.
• The Japanese government has started implementing its JPY 18tn recovery budget in 4Q 2011, and we expect the budget to boost Japanese GDP by 1–1.5% in FY2012.
• Mainly due to the earnings rebound, we expect the TOPIX trailing P/E to drop from around 16.5x to 14x – 14.5x by year end; still the earnings rebound should provide some room for moderate price increases.

↗ Positive scenario **Topix (6-month target): 900**

• Stronger global demand and stabilizing European markets provide an additional boost to earnings, and also lead to improved risk taking. Falling risk aversion is likely to lead to a weaker yen, providing further upside to earnings. TOPIX target is based on 16.0x trailing P/E.

↘ Negative scenario **Topix (6-month target): 600**

• Faltering global growth leads to weak exports, triggering negative earnings surprises. A strengthening USDJPY below 75 in response to rising risk aversion might provide an additional drag on the economy and earnings. We would then expect the P/E ratio to contract to 13.5x, even if earnings show no recovery.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
JPY and exports	The exchange rate is an important factor for the Japanese equity market, and central bank intervention is a key swing factor. Japan's trade balance could be in deficit and may impact USDJPY rates. **Key date: 09 July, Japanese trade balance**
BoJ's monetary policy board meeting	The Bank of Japan's (BoJ) additional commitment to its asset purchase program, which is currently JPY 65tn in size, would lead to a weaker yen, in our view. **Key date: 12 July, BoJ policy meeting**

Recommendations

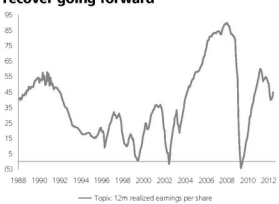
Tactical (6 months)

- The earthquake in Japan and recent floods in Thailand have impacted Japanese earnings negatively. A recovery from these disasters should benefit auto and industrial stocks in particular.
- We prefer companies that continue cost reduction initiatives to maintain price competitiveness during the period of yen strength.

Strategic (1 to 2 years)

- A weaker USDJPY may drive Japanese companies' earnings recovery beyond a technical recovery from natural disasters.
- A rapidly aging population and the lack of a powerful and stable government remain negative for the country's longer-term economic prospects.

Japanese realized earnings likely to recover going forward



Source: Thomson Reuters, UBS CIO, as of 21 June 2012
Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024153

Emerging market equities

Preference: overweight

MSCI EM (27 June): 913 (last month: 907)

UBS View **MSCI EM 6-month target: 1,000**

• Currency weakness hurt emerging market (EM) equity performance in US-dollar terms year-to-date. We expect EM FX to appreciate against the USD from current levels over a six-month horizon.
• As expected, China has started to ease monetary policy. We believe there is also room to do more on the fiscal side, helping to support China's economic growth outlook for the second half of 2012 and into 2013. The 2Q GDP numbers are expected to represent the low point in the current cycle.
• Given the above, in our base case, we see scope for some multiple expansion for the MSCI EM Index, from the current 10.3x realized price-to-earnings ratio to closer to 11x over the next six months. We expect earnings growth of around 10% over the next 12 months.
• Within EM, we believe that Asia is best positioned for economic growth in the second half of 2012. In emerging Asia, we prefer China. In Latin America, we prefer Brazil and Mexico. Central and Eastern Europe remains the most vulnerable region, and we remain neutral on Russia.

↗ Positive scenario **MSCI EM (6-month target): 1,190**

• The outlook for the global economy improves, boosting EM's ability to grow more strongly in 2013. Stronger economic growth leads to earnings growth of 15%. Investor confidence improves, leading to a better P/E multiple of 12.5x trailing earnings. More cyclical Korea and Taiwan would benefit.

↘ Negative scenario **MSCI EM (6-month target): 730**

• Serious negative developments (e.g. a further deterioration of the Eurozone crisis, the US fiscal cliff, or a Chinese hard landing) hit trade and thus the economic prospects of emerging markets. In this case, we would expect a 25% decline in earnings. More defensive Malaysia would do better, whereas more cyclical Korea and Taiwan would underperform. We assume, however, that the market would also be expecting some recovery in earnings for 2013, helping the P/E multiple to recover to 9.5x trailing earnings.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Emerging market monetary policy	Investors are trying to figure out which emerging market central banks still have room to ease monetary policy and where rates may be heading up. **Inflation data due for Russia (4–9 July), Brazil (7 July), China (9 July), Mexico (9 July), India (13 July), South Africa (18 July).**
Oil prices & EM FX	Recent declines in oil prices are helping to reverse some of the inflationary impact of earlier rises, but the exchange rate matters, too.

Recommendations

Tactical (6 months)

- In Asia, we expect Chinese equities to benefit as the Chinese economy avoids a hard landing. In Latin America, we prefer Brazil and Mexico.

Strategic (1 to 2 years)

- Structural factors (e.g. stronger fiscal position, more favorable demographics) should continue to support stronger economic growth than in the developed economies.
- Strategically, we would advise a tilt in EM portfolios toward cash-rich and faster-growing Asia.

Emerging market country preferences

Current most preferred markets	Current least preferred markets
Brazil	Hungary
China	Indonesia
Mexico	Poland

We currently have a neutral view on the remaining emerging equity markets in the MSCI EM index.

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HOUSE_OVERSIGHT_024154

Asian equities (ex-Japan)

Preference: overweight

MSCI Asia ex-Japan (27 June): 469 (last month: 466)

UBS View **MSCI Asia ex-Japan (6-month target): 515**

• The region continued to show high volatility last month, with its P/BV temporarily close to 2008 lows.
• Hong Kong and Singapore markets' domestic fundamentals remain solid. Hong Kong should benefit from China's gradual recovery in 2H 2012, while Singapore's economy is rebounding and corporate balance sheets and earnings remain solid. After the rate cut early June, we expect China to have more policies to support growth in 2H 2012. China is our most preferred market, while Indonesia is least preferred in the region. We are more concerned about Indonesia's fiscal deficit, since the fuel price hike did not happen. Domestic problems for Indonesia include current account deficits, potential capital outflows, bottomed-out inflation and hiccups in economic and market reforms, in our view.
• We expect 10% earnings-per-share growth over 12 months for the MSCI Asia ex-Japan, which trades on 11.6x 12-month trailing earnings. We expect this multiple to expand slightly in the next six months, as the current earnings downgrade cycle is approaching its end. Nevertheless, MSCI Asia ex-Japan is likely to see further volatility in the near term due to global macro risk factors.

↗ Positive scenario **MSCI Asia ex-Japan (6-month target): 610**

• More supportive monetary and fiscal policy, stable inflation, sustained domestic demand growth, and an improved global growth outlook should lead to a better earnings outlook. We would expect earnings growth of 15% and a P/E based on realized earnings of 14x.

↘ Negative scenario **MSCI APAC ex-Japan (6-month target): 380**

• A hard landing in China with a global recession leads to negative earnings revisions for 2012. In this scenario, earnings could fall 20% over 12 months and the P/E could fall to about 10.5x.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Growth	Both HK and Singapore's GDP growth disappointed, raising concerns about the growth momentum in the region. Investors should focus on whether growth will re-accelerate in the near term. **Key dates: 3 July, HK retail sales; 13 July, SG retail sales; 17 July, SG exports**
Policy responses	Some other countries in the region have structural issues due to fuel subsidies (e.g. Indonesia) and fiscal deficits (e.g. India). Policy responses often come on an ad hoc base.

Recommendations

Tactical (6 months)

- We prefer Hong Kong banks, Singapore high-dividend stocks and Chinese insurance and consumer plays.
- We are concerned about India's inflation pressure, but we see opportunities in the power and banking sectors.

Strategic (1 to 2 years)

- Rising consumption is the long-term trend in Asia ex-Japan that we expect will continue to play out.
- In China, sectors that contribute to improved labor productivity or deliver goods and services for the elderly should benefit from demographic changes (ageing population and decelerating population growth).

Asia ex-Japan country preferences

Current most preferred markets	Current least preferred markets
China	Indonesia

We currently have a neutral view on the remaining emerging equity markets in the MSCI Asia ex-Japan index.

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HOUSE_OVERSIGHT_024155

Equity styles

UBS View **Prefer value and large caps in Europe, mid caps in US**

• We recommend that investors look for value opportunities in Europe: The cheapest stocks within each sector are at extreme relative valuations, which should begin to normalize. Within Financials, however, investors should limit their direct exposure to the Eurozone debt crisis. We assess the cheapness of a stock by looking at its price-to-earnings and price-to-book ratios relative to its peers.

• We believe US mid caps will outperform large caps. US economic data is forecast to stabilize and GDP growth should be resilient in the second half of 2012. Greater domestic sales exposure reduces earnings risk coming from Europe. In Europe, we prefer large over small caps in the current very challenging economic environment.

• High quality dividend paying stocks provide a real and stable income stream to investors during the current low yield environment. Furthermore, they give exposure to the long term potential of equity markets while also providing some support in declining markets.

↗ Positive scenario **Prefer value, low quality and small caps**

• Leading indicators continue to move higher, and risks related to the Eurozone debt crisis subside. In this case, add deep cyclical value (cheap price/book, price/earnings) regardless of sector, with high beta and high leverage. In such an environment, small- and mid-cap stocks should also perform well, but a dividend strategy would be too defensive to outperform the market.

↘ Negative scenario **Prefer quality and large caps**

• The global economic picture deteriorates markedly. In this case, buy high-quality growth companies and large caps. Do not look for value opportunities, but be as defensive as possible with your equity exposure. Look to high-quality, dividend-paying stocks for yield.

Note: Scenarios refer to global economic scenarios (see slide 7).

What we're watching	Why it matters
Earnings revisions – see chart (3-month moving average upgrades vs. downgrades)	Watch for signs of continued improvement in earnings revisions (aggregated from stock level). An improved earnings outlook would cause investors to add more risk, allowing multiples to expand and triggering the outperformance of value stocks.
US and Eurozone PMIs	If PMIs stabilize or improve, value stocks should outperform as there is no longer justification to pay the high price for earnings stability (quality). **Key dates: 2 July, PMI Manufacturing Eurozone; 2 July, US ISM Manufacturing**

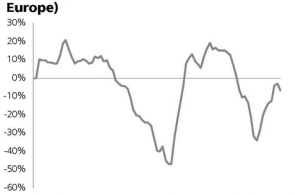
Regional differentiation

- Within Europe, look for value opportunities within each sector, but be aware of the higher-risk Financials.
- In the US, there are opportunities in value names that also show strong growth.
- Within Europe, avoid small caps and instead rotate into large caps.
- In the US, prefer mid caps to large caps while GDP growth is above 2%.

Strategic (1 to 2 years)

- We expect value strategies to outperform the market significantly over the long term.
- Mid-cap stocks provide attractive opportunities over the longer term.

European earnings revisions fell hard last year, but the down cycle might be be ending (net revisions, in %; MSCI Europe)



Source: FactSet, UBS CIO, as of 27 June 2012

Note: Past performance is no indication for future returns.

UBS

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HOUSE_OVERSIGHT_024156

Section 2.B

Asset class views

Fixed income

UBS

Bonds overview

Government bonds – Key points

• Government bond yields of major developed markets started to rise from their historical lows ahead of Greek elections, in particular with hopes of more Eurozone integration (e.g. Eurobonds or a European bank deposit guarantee). The new Greek government has at least eased concerns of an imminent and disorderly Greek exit helping yields in their short term rise. However, further central bank easing, including the extension of Operation Twist (OT) until end of 2012 by the Fed limited the further upside potential in yields over the coming months.

• Our expectations for bond yields over the coming 6 months remain a marginal rise. Despite recent setbacks in global growth, the world economy remains in expansion mode. However, OT will keep longer yields low for longer. Also short-term downside risks to bond yields cannot be excluded; Spain has returned to the spotlight, and challenges in Italy's adjustment programs remain. Given current division among European leaders, the mutualization of debt is unlikely to be resolved soon.

• On a relative basis, we prefer German and Swiss bonds, over those in the US and UK, where bond yields could rise faster due to a sounder economic outlook. In particularly in the US, the cyclical recovery looks comparatively more robust.

• Declining growth momentum, extension of Operation Twist by the Fed and a rising likelihood of a rate cut by the ECB, are likely to keep yields on extraordinary low levels, for the time being. Thus we suggest a neutral duration position at this stage.

Corporate and emerging market bonds – Key points

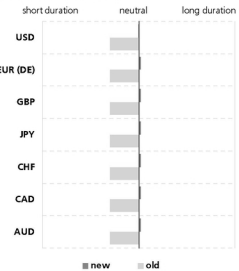
• We maintain our preference for corporate credit (both investment grade and high yield) as well as emerging market bonds, keeping overweight positions in all three segments.

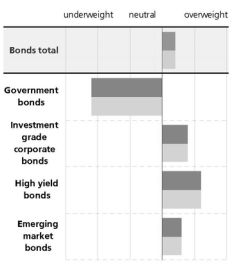
• Investment grade (IG) corporate bonds showed remarkable resilience in the latest downturn. The asset class is likely to outperform government bonds in the coming six months, with higher liquidity and lower volatility than HY bonds. We see the highest return potential in the lower-rated IG segment (BBB and A).

• US corporate bonds of lower credit quality (high yield, HY) remain fundamentally supported by solid balance sheets and a benign US growth outlook. Given the low risk of default losses, valuations are attractive at an effective yield of 7.5%. For US HY, we expect high single-digit total returns in the next six months. US senior loans are an attractive alternative to traditional fixed income assets.

• Emerging market bonds should continue to benefit from better fundamentals than those of developed markets over the medium term. Valuations remain attractive, and the potential for spreads to trend lower should more than offset the gradual increase in US Treasury yields in the quarters ahead. We continue to prefer increasing exposure to corporate bonds while keeping existing investments in sovereign bonds.

Preferences (6 months)





Source: UBS CIO, as of June 19th 2012

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HOUSE_OVERSIGHT_024158

US rates

Duration preference: neutral

US 10-year (29 June): 1.6% (last month: 1.7%)
US 10-year (6-month forecast): 1.8%

UBS View

- US 10-year yields have recovered slightly from their June 1st 2012 lows after a reduction of political risks in the Eurozone. However, Treasury yields remain near historical lows due to the extension of Operation Twist (OT) coupled with recent setbacks of domestic economic data.
- We expect a marginal rise in yields since the US economy remains on a moderate cyclical growth path with the housing market having bottomed out. Additionally the diminished near-term risk of a Greek exit from the Eurozone following elections supports a gradual rise in Treasury yields.
- However, over a six-month horizon, the extension of Operation Twist (OT) until the end of 2012 by the Federal Reserve (Fed) will limit the upside potential in yields. As of late, the probability of even more stimulus in the form of quantitative easing from the Fed has risen substantially and markets have pushed out the first rate hike expectation into 2015. Additionally, structural obstacles from the pending US fiscal consolidation will also limit the upside potential for yields. Further, the US economy seems more vulnerable to possible spillover effects of increased political uncertainties in the Eurozone.

↗ Positive scenario for US bonds — **US 10-year (6-month range): 1.5–1.7%**

- The European debt crisis further re-escalates. The resulting contagion would intensify the current flight to quality, with Italian and Spanish spreads above 550 basis points to the Bund (our base case).
- With the increased likelihood of further quantitative easing, the risk is that yields would stay low or fall lower.

↘ Negative scenario for US bonds — **US 10-year (6-month range): 2.3–2.9%**

- If the EU leaders indicate serious commitment towards more fiscal integration, and US growth proves more sustainable with a rapidly improving labor market, then yields could rise.
- Recently, market expectations regarding future rate hikes by the Fed have pushed out a first rate hike into 2Q 2015. Any re-pricing into 2014 or 2013 will result in higher yields.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Fed policy	The Fed's assessment of the labour market determines it's stance on quantitative easing and is key for yields. Key dates: **31 July, Federal Open Market Committee meeting**
Labor market	Key focus of the Fed, judged in part based on estimates of the non-accelerating inflation rate of employment. Key date: **6 July, US non-farm payrolls**
Inflation expectations	Current yields reflect low real interest rates, but rather normal inflation expectations. If inflation expectations decline, the risk of a deflationary spiral would exist, leading to more downside risk for long maturity yields.
US presidential election	The US presidential election will guide fiscal spending for the coming years.

Recommendations

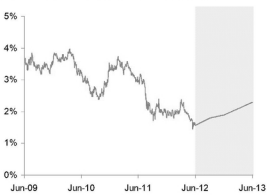
Tactical (6 months)

- Declining growth momentum, extension of Operation Twist by the Fed and a rising likelihood of a rate cut by the ECB, are likely to keep yields on extraordinary low levels, for the time being. Thus we suggest a neutral duration position tactically.

Strategic (1 to 2 years)

- Yields have significant upside potential over the next couple of years given the current extraordinarily low levels – of real interest rates in particular. Thus clients with a longer time horizon should focus on bonds with short and medium maturities

USD 10-year yields and forecasts



Source: Bloomberg, UBS CIO, as of June 18th 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Daniela Steinbrink Mattei, daniela.steinbrinkmattei@ubs.com

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HOUSE_OVERSIGHT_024159

European rates

Duration preference: neutral

EUR (DE) 10-year (29 June): 1.6% (last month: 1.4%)
EUR (DE) 10-year (6-month forecast): 1.7%

UBS View

- We believe the reasons for the recent rise in Bund yields are numerous: First, signs of more Eurozone integration (e.g. European bank deposit guarantee) combined with the recapitalization of Spanish banks. Second, the firm commitment of central banks to act if downside risks materialize (possible quantitative easing by the BoE and a higher probability of a ECB rate cut) and finally, Greek election results met expectations. However, this rise was muted given the extension of Operation Twist, weak global / German data and Spain's return to the spotlight.
- Over a three- to six-month horizon, we expect growth momentum to remain subdued but still in positive territory; we should have more information on how Spain and Italy are handling their adjustment programs. Also, the new pro-memorandum Greek government should limit safe haven inflows, and thus limit short-term downside risks to yields.
- In the UK, economic data continues to be mixed as the recovery continues but is prone to external shocks. The recent liquidity provision announcement by the BoE has confirmed these concerns.
- In Switzerland, yields have traded range bound owing to conflicting economic data. The SNB stressed increased downside risks to the economy and stands ready to act. However, we believe Swiss yields will gradually normalize.

↗ Positive scenario for German bonds **10-year Bund yield (6-month range) 1.1–1.3%**

- The European debt crisis re-escalates. The resulting contagion would intensify the current flight to quality.
- The economic recovery fails to gain momentum in the second half of the year. Credit demand fails to improve further as some of the recent European Central Bank (ECB) data indicates. The ECB cuts rates.
- Further quantitative easing by the Fed would be supportive for Bunds and speaks for lower yields.

↘ Negative scenario for German bonds **10-year Bund yield (6-month range) 1.9–2.3%**

- A moderate Eurozone economic recovery kicks in, supporting debt-burdened Eurozone countries in their efforts to fulfill austerity commitments and thus reducing the demand for safe-haven assets. Alternatively, Germany gives additional guarantees and the Eurozone moves towards a transfer union.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Elections/EU fiscal consolidation	The EU Summit will show if newly elected governments will change the dynamics in the Eurozone.
Central banks	The revival of the SMP program by the ECB would reduce the yields in the periphery. Their assessments of the current economic situation can give hints of further rate cuts or quantitative easing measures. Key dates: **5 July, ECB rate decision; 31 July, Fed FOMC meeting**
Economic variables	Credit conditions (ECB bank lending survey). Key date: **14 August, Eurozone GDP Q2**
Eurozone yield spreads	The level of yield spreads to German bonds influences the level of German Bund yields due to safe-haven flows.

Recommendations

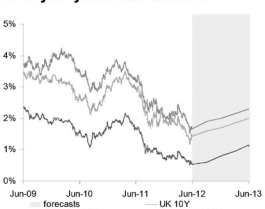
Tactical (6 months)

- Long term Bund yields would fall lower, in case of rising Euro zone break up probability. In contrast if Germany would need to support the periphery further, Bund yields would rise. We expect the market to oscillate between these two cases and recommend to stay neutral on duration tactically.

Strategic (1 to 2 years)

- Yields have significant upside potential over the next couple of years. Thus clients with a long time horizon should focus on bonds with short and medium maturities.

EU 10-year yields and forecasts



Source: Bloomberg, UBS CIO, as of June 18th 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Daniela Steinbrink Mattei, daniela.steinbrinkmattei@ubs.com or Sebastian Vogel, sebastian.vogel@ubs.com or Nina Gotthelf, nina.gotthelf@ubs.com

Please see important disclaimer and disclosures at the end of the document.

HOUSE_OVERSIGHT_024160

Investment grade corporate bonds

Preference: overweight

Current global spread (26 June): 225bps (last month: 225bps)

UBS View **Spread target (6-month): 170bps**

• We expect investment grade (IG) corporate bonds to achieve a total return of around 3% over the next six months. Our spread target of 170bps is based on our benign economic outlook, ongoing investor appetite for income-generating assets and expected negative net issuance. This target spread is still above its 15-year average of 130bps.

• Non-financial corporates: While total yields are at record lows, the pickup over government bonds and money market rates is attractive. Aggressive re-leveraging by companies looks unlikely in the current environment. Credit quality should remain good and non-financials continue to deliver a stable income.

• Financial corporates: Due to regulatory challenges, spreads are expected to remain above past averages. Total returns could outpace non-financials, but volatility will be considerably higher.

• Overall, IG corporate bonds remain a preferred asset class, providing an attractive yield pickup. The asset class offers relatively low volatility and a benign total return outlook. We expect lower-rated issuers (BBB and A) to outperform higher-rated ones.

↗ Positive scenario **Spread target (6-month): 140bps**

• Global growth accelerates more forcefully than expected. This could compress spreads to closer to pre-crisis levels. Spreads for Financials are likely to remain elevated due to regulatory challenges. However, in this positive case, rising benchmark yields would limit total returns to 1–2% over six months.

↘ Negative scenario **Spread target (6-month): 400bps**

• Even if US economic growth falters, and the European recession turns out to be worse than currently expected, we believe we would be unlikely to see the spread levels reached in 2009, given companies' superior balance sheet positions. European financial issuers would be most at risk in this scenario.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Core market yields	Developed market sovereign yields are only expected to increase gradually. A sudden rise and high volatility would hurt IG credit. **Key dates: 1 August, Federal Open Market Committee meeting**
Corporate fundamentals	Good corporate earnings and low leverage on corporate balance sheets should help prevent defaults.
New issuance	As companies continue to deleverage, net negative supply on the IG market should support higher prices.

Recommendations

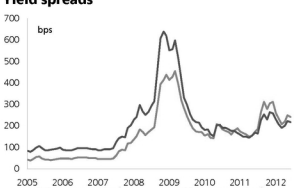
Tactical (6 months)

- We still see room for tighter yield spreads; the return outlook compares very favorably to government bonds.
- Internationally diversified companies from non-financial sectors offer a stable and relatively safe income stream for conservative investors.
- We recommend bonds from the lower IG rating segments (BBB and A) over higher-rated issuers.

Strategic (1 to 2 years)

- We prefer corporate over sovereign assets given companies' robustness compared to the structural weakness of public finance in many countries.

Yield spreads



Source: Bloomberg, UBS CIO, as of 26.June 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Philipp Schöttler, philipp.schoettler@ubs.com

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HOUSE_OVERSIGHT_024161

High yield corporate bonds

Preference: overweight

Spread USD HY (26 June): 660bps (last month: 660bps)

UBS View **USD HY spread target (6-month): 525bps**

• US high yield (HY) bonds continue to offer attractive value; we expect high single-digit total returns over the next six months. We stick to our spread forecast of 525bps based on an ongoing recovery of the US economy, robust company balance sheets, rising earnings, and ongoing investor appetite for higher-yielding assets. US HY bonds remain our preferred asset class.

• Fundamental factors remain supportive. Despite the recent uptick in defaults, in the absence of a renewed US recession only a very gradual increase is to be expected. We forecast a modest rise in the trailing default rate to 3.5% at the end of the year from 3.1% in May. A heavy load of new issuance in the first three months of the year means that HY companies will be faced with a lower risk of failed refinancing going forward (e.g. in case of an unexpected economic slump).

• We acknowledge that ongoing risk aversion could still cause spreads to widen somewhat in the short run. Investors who are able and willing to hold on to their HY position will likely benefit over 6 months.

↗ Positive scenario **USD HY spread target (6-month): 450bps**

• In the positive economic scenario, a rally in high yield bonds and a return to pre-crisis spreads of about 400bps is likely. Benchmark yields would also rise, limiting HY returns to around 10%. European HY outperforms the US.

↘ Negative scenario **USD HY spread target (6-month): 1,200bps**

• A global recession is a major risk for high yield bonds. Based on the more robust state of the corporate sector, we would not expect spreads to widen to 2008/09 peak levels above 2,000bps. Although short-term spikes are likely, due to liquidity suddenly drying up, we would expect a quick return to the "usual" recession-level spread of around 1,200bps.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Credit quality/ default cycle	As long as corporate earnings increase and balance sheets remain backed by high cash levels and low debt ratios, the default rate will remain below its 5% long-term average.
New issuance	For now, favorable conditions in the primary market have mainly been used for refinancing. More aggressive issuance activities should be monitored.
Bank lending standards	Bank lending provides an important source of funding. US banks relaxed standards slightly in 2Q. **Key dates: early-July, ECB bank lending survey; late-July, Fed Senior Loan Officer Survey**

Recommendations

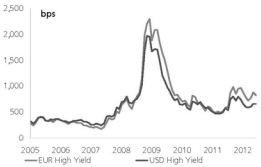
Tactical (6 months)

- US high yield corporate bonds offer an attractive return outlook and should be overweighted.
- We prefer US over European issuers given the poorer economic outlook in Europe and the increasing proportion of peripheral and financial issuers in the European HY universe.
- Inflows into HY mutual funds have been strong so far in 2012, but new issuance has cooled down a bit in April and May.

Strategic (1 to 2 years)

- We expect US defaults to remain at below-average levels for longer. Significant re-leveraging is unlikely in the medium term.
- We believe US high yield corporate bonds will provide good returns for absolute return-oriented investors, as well as relative to other fixed income segments.

Yield spreads



Source: Bloomberg, UBS CIO, as of 26 June 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Philipp Schöttler, philipp.schoettler@ubs.com

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HOUSE_OVERSIGHT_024162

Emerging market bonds

Preference: overweight

EMBI Global / CEMBI spread (27 June): 388bps / 430bps (last month: 410bps / 440bps)

UBS View **EMBI Global / CEMBI spread target (6-month): 340bps / 350bps**

- Emerging market (EM) bond spreads are currently higher than implied by fundamentals, and we think they offer attractive returns even against a more challenging global backdrop.
- The probability remains significant, though, that negative headlines out of the Eurozone or a weakening global growth outlook will put short-term pressure on EM bond prices. However, given EM sovereigns' better average fundamentals, and EM corporates' solid profit growth outlook and low leverage ratios, we think that periods of price weakness should offer attractive entry points.
- Although we revised our spread targets (to 340bps from 300bps for sovereigns, and to 350bps from 310bps for corporates), we continue to expect spreads to trend gradually lower over the next six months, more than offsetting the moderate rise in US Treasury yields we expect in the quarters ahead.

↗ Positive scenario **EMBI Global / CEMBI spread target (6-month): 290bps / 290bps**

- Yield stability in Europe's core markets and higher-than-expected growth in the US would provide a favorable backdrop for EM fixed income spreads. In such an environment, issuers of lower credit quality would likely fare better. Average spreads could tighten to below 300bps in such an environment.

↘ Negative scenario **EMBI Global / CEMBI spread target (6-month): 525bps / 700bps**

- An environment of escalating risk aversion in Europe, deteriorating EM funding markets, weakening global growth prospects, and lower commodity prices could impact EM credit negatively. Liquidity in emerging market bonds could dry up and spreads could spike.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Core market yields	The direction of US Treasury and German Bund yields are important for EM fixed income spreads, especially for USD- and EUR-denominated bonds. **Key dates: 1 August, US ISM & FOMC rate decision**
Capital flows	The European debt crisis may lead to further periods of outflows and weaker prices, which could offer attractive entry levels for investors.
Monetary policy cycles	Monetary policy easing remains a key topic for local currency bonds. We look for central bank policy announcements in key markets such as Brazil, Indonesia, Malaysia, Mexico, Poland, South Africa, and Turkey. **Key policy rate announcement dates: 29 June, Colombia; 4 July, Poland; 5 July, Malaysia; 11 July, Brazil; 12 July, Indonesia; 19 July, Turkey**

Recommendations

Tactical (6 months)

- EM corporate bonds are particularly attractive due to favorable valuation, solid fundamentals, and their relatively short duration. We advise clients to focus on investment grade bonds in the current environment. We continue to like selected sovereign bonds.
- Please refer to our EM bond list for specific guidance.

Strategic (1 to 2 years)

- EM bonds are attractive for longer-term investors looking for higher yields.
- Local markets in Asia offer interesting opportunities for longer-term investors because of a supportive currency outlook.

Room for tightening

Spreads of EM bonds over US Treasuries (in bps)

Source: JP Morgan, UBS CIO, as of 27 June 2012

Note: Past performance is not an indication of future returns.

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HOUSE_OVERSIGHT_024163

Section 2.C

Asset class views

Foreign exchange

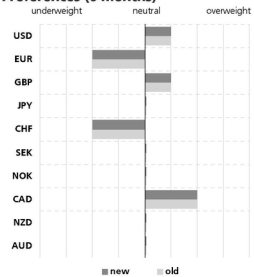
UBS

Foreign exchange overview

Foreign exchange – Key points

• **EUR**: Greek election results reduce the near-term euro break-up risk. Now starts a difficult period with re-negotiation of the Greek austerity program. Also Spanish yields, which have reached hard to sustain highs, need to be addressed. As the crisis carries on and hurts growth prospects for Europe well into 2013 we recommend to keep euro short positions. The risk for either an ECB rate cut or an extension of bond purchase program by ECB as well as the increasing risks to the banking system are weighing on the euro.
• The extension of Operation Twist in response to weakening growth outlook in the US has its pros and cons for the **USD**. Global risk aversion and search for alternatives to the euro is supporting the greenback currently. The clear commitment of the Fed to respond with more stimulus to European contagion and the approaching fiscal cliff is limiting the upside potential for the USD.
• The **CAD** has increased in attractiveness recently due to weaker spot rates, while good growth dynamics in Canada still lead to rate hike expectations. We continue to recommend an overweight.
• We keep the overweight position in the **GBP**. The BoE eased monetary conditions for the banking system to protect the UK financial market against contagion effects spilling over from the continent. Apart from this, we think the pound remains well supported, because valuation is cheap and investors are seeking liquid alternatives to the euro.
• **EURCHF** is currently trading at the low end of our expected range of 1.20–1.25, and we therefore keep an underweight position in the CHF. The 1.20 EURCHF floor prevents any CHF appreciation and the SNB has clearly shown in May that it is willing and can protect the floor; we expect the SNB to continue in this.
• Sweden and Norway stand out for their lower debt-to-GDP ratios and current account surpluses. The **NOK** appreciated recently, due to safe haven inflows. We stay neutral as the appreciation potential is now limited. The **SEK** is very sentiment-driven and should profit in the medium term.
• Longer-term debt issues and weak competitiveness of major exporters are hurting the Japanese economy. Therefore the Bank of Japan and Ministry of Finance will maintain an expansive policy and continue to try weaken the **JPY**. However, current positive growth dynamics are supportive of the JPY.
• For commodity currencies, the **AUD** and **NZD** weakened within ranges from March to May. We expect another bout of weakness over the next three months together with increasing European troubles.
• We expect the **CNY** to appreciate 3% against the USD, moving towards 6.15 over the coming 12 months. Internationally marketable instruments (such as CNH, the offshore version of the Chinese currency traded in Hong Kong) have similar appreciation potential. Our most preferred emerging market currencies are currently MXN, ZAR, PLN, ZAR, KRW and CNY.

Preferences (6 months)



Source: UBS CIO, as of 22.06.2012

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HOUSE_OVERSIGHT_024165

G10 currencies

UBS View **see UBS FX forecasts, below-right**

- The negative momentum on the **EUR** is likely to persist. The growth outlook has deteriorated in the last couple of months to a point, which challenges the fiscal austerity efforts seriously.
- The **USD** profits from European troubles, but the upside remains limited by expansive fed policy
- The **GBP** is resuming its uptrend despite stimulus measures by the Bank of England. The main reason is the need for diversification of the EUR and better current economic indicators.
- The **AUD** seems to have found a bottom, and should recover on the back of better risk sentiment. We believe the **CAD** remains one of the most attractive currencies.
- The SNB has shown that it will defend the **CHF**-floor. EURCHF will remain in the 1.20-1.25 range.

↗ Positive scenario **FX targets: EURUSD >1.35 / EURJPY 120**

- Eurozone economies avoid a material contraction and financial market conditions recover. EURUSD should trade above 1.40 in this case. Yen weakness could develop, since hopes for global growth would make the carry-trade role of the yen more prominent.

↘ Negative scenario **FX targets: EURUSD <1.20 / EURJPY 100**

- European growth outlook deteriorates further with continued recession in 2013. The euro could rapidly fall below 1.20. A European debt default cascade is a tail risk for the single currency. Risk aversion would lead to an extended USD and JPY rally.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Chinese growth	We expect Chinese growth to land softly and then recover. Should China disappoint us with a hard landing, then we have a problem. Risk unwinding will support USD and JPY versus risk takers currencies.
European sovereign crisis, ECB policy	With Greek elections out of the way, the main focus lies on Spain and on potential ECB rate cuts. Any improvement in Spain should support the euro, a rate cut would probably hurt it. **Key dates: ECB Meetings on 5 July and 2 August**
US growth and Fed policy response	Will the Fed add QE to current Operation Twist programs? How will presidential elections change political powers in Washington? Keys to address long-term financing issues. **Key dates: 1 August, FOMC meeting; 6 November, US Presidential elections**

Recommendations

Tactical (6 months)

- Long USD, GBP and CAD
- Short EUR, and CHF

Strategic (1 to 2 years)

- We recommend investors diversify from large USD and EUR exposures into minor currencies. Structural financing issues weigh on each of the major currencies.
- The best diversifiers based on long-term macroeconomic fundamentals are the CAD and the SEK. The AUD, NOK and CHF should only be added at better entry levels.

UBS CIO FX forecasts

	25-06-12	3M	6M	12M	PPP
EURUSD	1.2485	1.22	1.28	1.32	1.31
USDJPY	79.88	83	85	90	80
USDCAD	1.0296	0.98	0.94	0.94	0.94
AUDUSD	0.9993	0.97	1.00	1.05	0.75
GBPUSD	1.5548	1.56	1.65	1.70	1.69
NZDUSD	0.7851	0.75	0.79	0.83	0.60
USDCHF	0.9617	0.99	0.95	0.93	1.01
EURCHF	1.2006	1.21	1.21	1.23	1.32
GBPCHF	1.4947	1.55	1.56	1.58	1.71
EURJPY	99.74	101	109	119	105
EURGBP	0.8026	0.78	0.78	0.78	0.77
EURSEK	8.8133	8.65	8.55	8.40	8.86
EURNOK	7.492	7.40	7.40	7.40	8.57

Source: Thomson Reuters, UBS CIO, as of 25.06.2012

Note: Past performance is not an indication of future returns.

HOUSE_OVERSIGHT_024166

EM currencies

UBS View **For current exchange rates and CIO forecasts see table**

- With the risk of a Greek Eurozone exit subsiding, we think selected emerging market (EM) currencies look attractive over the medium term against the USD and JPY and some even against the EUR.
- Global growth prospects remain intact, also due to recent policy easing in China, and the risk of a broader European crisis remains contained, in our view. Over the medium term, this will likely support EM currencies. However, further bouts of volatility remain likely in the months ahead, since negative headlines from Europe will likely continue to weigh on investor sentiment.
- Our tactical and strategic recommendations list our preferred currencies. For now, we remain cautious on the Brazilian real, Hungarian forint, Indian rupee, and Turkish lira.

Positive scenario **> 7% outperformance of EM FX against G4 currencies over a 6-month horizon**

- Macroeconomic data comes in stronger than expected and contagion risks in Europe subside further. EM exchange rates could appreciate swiftly against G4 currencies (USD, EUR, JPY, GBP).

Negative scenario **> 4% depreciation of EM FX across regions against USD over a 6-month horizon**

- Global growth prospects suffer a prolonged deterioration and the European debt crisis intensifies further. EM exchange rates could see a significant, although likely temporary, sell-off across regions. Should growth concerns return to the fore, we expect export-oriented EM countries (e.g. most Asian economies) to welcome currency weakness in order to cushion economic growth.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Inflation dynamics in EM	Inflation dynamics are important to forecast central bank policy rate decisions. Monetary easing typically weighs on EM currencies, while rate hikes tend to be supportive. **Key policy rate announcement dates: 29 June, Colombia; 4 July Poland; 5 July, Malaysia; 11 July, Brazil; 12 July, Indonesia; 19 July, Turkey**
European sovereign crisis	Setbacks in sentiment will likely lead to bouts of EM currency depreciation and elevated volatility across regions, providing attractive entry points for investors.
US growth	Growth in the US is key for risk sentiment, growth prospects in EM, and US monetary policy decisions. Positive surprises tend to support EM currencies. **Key dates: 1 August, US ISM & FOMC rate decision**

Recommendations

Tactical (6 months)

- Several EM currencies look attractive at current levels; we advise investors to gradually increase their exposure to our preferred EM currencies, using the yen and the USD as funding currencies. Our preferred EM currencies are CNY, IDR, KRW, SGD, MXN, ZAR, CZK, and PLN.

Strategic (1 to 2 years)

- We recommend EM currencies backed by stable fundamentals as a strategy to diversify currency exposure.
- Our favorites include the Chilean peso, Czech koruna, Polish zloty, Chinese renminbi, Korean won, Malaysian ringgit and Singapore dollar.

UBS CIO EM FX forecasts

	27.06.2012	3-month	6-month	12-month
Americas				
USDBRL	2.07	2.10	1.95	1.85
USDMXN	13.8	12.7	12.5	12.3
Asia				
USDCNY	6.37	6.30	6.25	6.15
USDINR	57.1	53.0	54.0	55.0
USDIDR	9'480	9'300	9'200	9'000
USDKRW	1'157	1'130	1'110	1'050
USDSGD	1.28	1.24	1.23	1.22
EMEA				
EURPLN	4.25	4.35	4.15	4.00
EURHUF	286	305	285	310
EURCZK	25.9	26.0	25.0	24.3
USDTRY	1.81	1.75	1.78	1.78
USDZAR	8.43	7.90	7.75	7.50
USDRUB	32.9	33.5	32.0	31.0

Source: Bloomberg, UBS CIO, as of 27 June 2012

Note: Past performance is not an indication of future returns.1

For further information please contact CIO's asset class specialists Michael Bolliger, michael.bolliger@ubs.com or Teck-Leng Tan, teck-leng.tan@ubs.com

Please see important disclaimer and disclosures at the end of the document.

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Section 2.D

Asset class views

NTAC: Commodities, Listed real estate, Hedge funds and Private equity

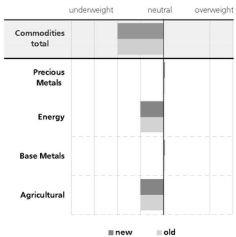
UBS

Commodities overview

Commodities – Key points

- Broadly diversified commodity indices, which declined by about 10% in May, found some support in June. The sideways move was visible across all commodity sectors, with gold (precious metals) delivering a temporary price uptick after the May US nonfarm payroll release.
- Despite signs of price stabilization, diversified **commodity indices are likely to decline** in the coming weeks. Sluggish economic activity should put upward pressure on most commodity inventories. To mitigate inventory buildups, lower prices are required, in our view. Production cuts for cyclical commodities need to be incentivized, while demand needs a push.
- The starting point for **gold** (**precious metals**) remains challenging, with supply likely to outpace demand this year. However, the chance of further monetary easing (QE3) by the Fed - which is not our base case - is an upside risk to the gold price. Given the weak fundamental situation combined with the substantial QE3 risk we maintain our neutral position.
- Easing geopolitical tensions related to Iran and further inventory builds in **crude oil** shifted the market's attention to sluggish demand growth. With muted incremental crude oil consumption, crude oil prices are likely to remain under pressure. But as production cuts are likely to kick in, downward price momentum should slow meaningfully. OPEC production cuts of up to 0.5 mbpd are needed in the coming months, and should allow the Brent price to stabilize in the USD 80.5 - 90/bbl range (WTI with a USD 12/bbl discount). But a sideways move in crude oil is not good enough to be long the commodity. The Brent forward curve has joined WTI and moved into contango as well. Hence, we keep our underweight position.
- With regards to **base metals**, prices have room to soften in the very short run (4-6 weeks). Copper prices are likely to decline to USD 6,600/mt in order to weigh on scrap supply and compensate for deteriorating Chinese import volumes. But the price decline in copper and other base metals should be short lived. Fiscal and monetary easing in China provide the basis for an acceleration in base metal demand and should keep prices largely flat on a 6-month horizon. Moreover, metals like aluminum and nickel are already trading deeply into the production cost curve, which we regard as unsustainable over the long run. We keep a neutral position on base metals until we see further confirmation of a pickup in Chinese economic activity.
- The outlook for ample supply in **agricultural commodities**, especially for corn, should still weigh on the grain complex towards the end of the year. Some short-term price support from dry US Midwest weather conditions in recent weeks is not altering our negative stance. Soft commodities are also battling with higher inventories, which will not bode well for prices in 3Q 2012.

Preferences (6 months)



Source: UBS CIO, as of 22 June 2012

Note: Past performance is not an indication of future returns.

Precious metals

Preference: neutral

Gold (25 Jun): USD 1,573/oz (last month: USD 1,573/oz)

UBS View (gold) **6-month target: USD 1,650/oz**

- The price outlook for gold is largely tied to quantitative easing by the Fed. Although the probability has increased on weak US data, our base case still calls for no QE. Hence, current prices run on thin ice, in our view. In the absence of any monetary stimulus, the gold market is likely to be oversupplied by more than 400 tons this year.
- Physical demand out of Asia remains lackluster. With the USDINR trading at a record high, the world's second-largest gold market, India, is likely to witness a steep decline in jewelry consumption and a rather firm increase in scrap supply. Central bank buying, estimated at 300 tons (7% of total demand) in 2012, will not be enough to clear the market. Right incentives – i.e. temporary price setbacks – are needed to motivate enough demand, before prices should manage to rebound towards USD 1,650/oz in 6 months.
- The negative stance from a absolute return perspective, should not overshadow the relative attractiveness of the yellow metal. The higher probability of QE3 by the Fed poses an upside risk to the gold price. Hence, we maintain our neutral position.

↗ Positive scenario **6-month target: USD 1,920/oz**

- Additional quantitative easing measures by the US Fed and the ECB are implemented, or inflation accelerates sharply in emerging markets. This would drive the gold price towards USD 1,920/oz again.

↘ Negative scenario **6-month target: USD 1,250/oz**

- A liquidity crisis would curtail financial demand and weigh on the gold price. A similar impact would come from deflationary pressure (positive real rates), or a combined Chinese and Indian hard landing.

What we're watching	Why it matters
Physical demand/supply	Further INR weakness in the coming months should determine jewelry demand from India. The health of coin and bar demand should be visible in the **World Gold Council mid-August release**. After the drop in PGM production, keeping an eye on South African PGM output is a must.
Flows & rates	To judge gold-related financing deals, we track gold export/import between Hong Kong and China. In addition we follow the latest uptick in ETF gold holdings and futures positions in gold to proxy investment demand strength. From an opportunity-cost perspective (real interest rate standpoint), we also look at the upcoming meetings of the ECB on **5 July** and Fed on **1 August**.

Recommendations

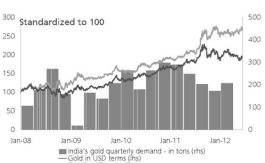
Tactical (up to 6 months)

- In case of a conversion into gold, investors should hold the position and target re-conversion at the original strike level. Over three months, we regard strike levels around USD 1,460–1,520/oz as attractive. With option volatility on the rise, the risk reward for selling volatility has improved.

Strategic (1 to 2 years)

- The risks for debt monetization in the developed world and double-digit wage growth in China and India, the two largest gold markets, should ensure a steady rise in demand for gold and platinum over time. Physically backed ETF positions allow investors to participate effectively in higher prices. Positive real interest rates present a threat to this view.

Gold in INR terms and Indian gold demand



Source: WGC, Bloomberg, UBS CIO, as of 19 June 2012

Note: Past performance is not an indication of future returns.

Brent (25 Jun): USD 91/bbl (last month: USD 109/bbl)

UBS View (crude oil) **Brent 6-month target: USD 100/bbl**

• A combination of renewed economic concerns about the Eurozone, easing geopolitical tensions between Iran and the West, and further inventory builds in crude oil triggered a sharp decline in the Brent crude oil price to USD 92/bbl and USD80/bbl for WTI.

• We think the crude oil market is oversupplied, which is likely to push up OECD crude oil inventories to 62 days of consumption in the coming months. While it seems that Saudi Arabia has slightly reduced its production in May from 10.1 mbpd in April, the country could be in a wait-and-see position for longer. First, the EU/US sanctions on Iran take effect at the end of June/early July, and bring some additional supply uncertainty. Second, Saudi Arabia also sees the need for lower prices in the short run to support economic activity in the developed world. But to prevent inventories from swelling too strongly, additional production cuts of up to 0.5 mbpd (0.55% of global demand) are needed in the coming months.

• So what should investors do at current levels? Although downward momentum in crude oil prices is likely to fade, a sideways move should still lead to negative investment returns in the short run. The Brent forward curve flipped into contango from backwardation, which is deteriorating the risk reward payoff of the energy sector. Hence, we currently maintain our underweight position.

↗ Positive scenario **Brent 6-month target: USD 140-180/bbl**

• Iranian oil exports gets subject to a complete embargo, or military interventions affect crude oil supply via the Strait of Hormuz. Alternative OPEC supply routs would not be in a position to compensate for such a supply shortfall. In order to curb demand, prices would need to spike towards USD 180/bbl.

↘ Negative scenario **Brent 6-month target: USD 75-80/bbl**

• Economic growth in the developed world contracts, thereby triggering a 0.5% to 1% decline in world crude oil consumption. Although to a lesser degree, fading Iranian tensions and no supply cuts by OPEC would allow crude oil inventories to build firmly and push Brent prices down towards USD 80/bbl.

What we're watching	Why it matters
Iran tensions	Resurfacing Iranian tensions could cause prices to spike higher, but an escalation is less likely, in our view. The focus is on remaining Iranian exports (currently around 1.6mbpd versus 2.4 mbpd in 2011).
Supply	US crude oil supply has come in strongly – reaching 6.4 mbpd. Further supply growth would not bode well for WTI crude oil. We also look at oil supply related to Sudan, Syria and Yemen, which caused a 0.5 mbpd decline in global crude oil production capacity. It seems that these production capabilities will remain offline for a longer period – potentially until 2014.
Oil market reports (EIA/IEA/OPEC)	**Key dates: 12 July, IEA Medium Term Oil market report.** Another round of downward revisions to demand, like in June, is not expected. The latest forecast changes to demand have been meaningful.

Recommendations

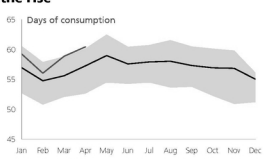
Tactical (6 months)

- We foresee further short-term weakness although less pronounced than the past month – we expect Brent to stabilize in the range of USD 80.5 - 90/bbl in the next 3 months. Production cuts and a pick up in emerging market demand should push Brent crude oil above current levels.

Strategic (1 to 2 years)

- After the demand slump in 1H 2012, we expect Brent crude oil to trade at USD 110/bbl in 12 months. This higher price level for 2013 reflects our expectation that economic activity should provide price support in 2013. Thus, three-year crude oil futures contracts at USD 90/bbl remain for us mispriced and an attractive investment solution for strategy-oriented crude oil investors.

OECD crude oil industry inventories on the rise



Source: EIA, UBS CIO as of 19 June 2012

Note: Past performance is not an indication of future returns.

Base metals

Preference: neutral

Current (last month)**: copper USD 7,317/mt**(7792); **nickel USD 16,528/mt**(16833); **aluminum USD 1,825/mt**(1989)

UBS View **6-month target: copper: UDS 7,400/mt nickel: USD 18,000/mt; aluminum: USD 2,200/mt**

- With the exception of aluminum, base metal prices stabilized broadly in June. But we see room for somewhat lower prices in the short run (4-6 weeks). Deteriorating industrial activity in Asian countries, weak US data and the Euro-zone crisis remain a price burden for the sector in the early part of 3Q12.
- To weigh on scrap supply and compensated for lower Chinese copper imports, copper prices are likely to decline towards USD 6600/mt, in our view. For the rest of the base metals, prices could move deeper into the cost curve of production. When it comes to aluminum and nickel, however, prices have already declined deeply into the production cost curve. In both cases supply cuts could come quicker and limit the price downside from current levels.
- In addition, supply uncertainty related to aluminum and nickel needs to be considered as well. Indonesia's new regulations on ore exports could jack up Chinese import costs by around 20% in the coming quarters. We think such an increase would be meaningfully, as 60% of China's nickel pig iron (NPI) production and 80% of China's bauxite imports depend on Indonesia.
- The reason why base metals overall should trade at current levels or higher in six months from now, relates to China. We think the People's Bank of China has made the right monetary policy steps to achieve stronger credit activity and higher sequential GDP growth in 2H 2012. With this fairly balanced risk reward on a six-month horizon, we maintain our neutral position.

Positive scenario

- China eases monetary policy aggressively, by pushing credit growth beyond 20% y/y. Additional QE in the US paired with stable European and Japanese demand would allow the sector to rally by around 25%.

Negative scenario

- Chinese monetary conditions remain behind the curve, resulting in an economic hard landing. A severe escalation of the Eurozone crisis (deep recession/global impact) could also bring prices close to 2009 levels.

What we're watching	Why it matters
Demand	The latest uptick in **Chinese imports, driven by technical factors,** do not reflect stronger end demand. The June figures (**on 10 July**) should give some clarity. That said, the attractiveness to import from an arbitrage perspective SHFE to LME has improved. Interest for physically backed copper ETFs needs to be tracked as exchange inventories are structurally low.
Supply	Copper supply has room to improve in 2H 2012 from poor mine output in 1H 2012. Fading supply disruptions and capacity additions put copper at risk. Indonesia's new export rules could have a positive one-off impact on aluminum and nickel.
Economic data/forward curve	People's Bank of China meeting, Chinese economic data (especially IP and loan growth by financial institutions) **Key dates: 11–15 July**

Recommendations

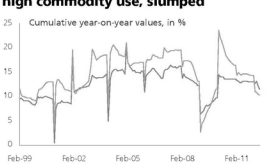
Tactical (3-6 months)

- From a timing perspective, building up exposure to base metals is not yet advised. While we still expect higher prices over the next 6–12 months, the short-term downside risks should offer investors better entry points, particularly for copper. That said, existing aluminum and nickel positions should be kept.

Strategic (>1 year)

- Rising energy and labor costs provide the backdrop for base metal prices to trend higher. The strongest performance is likely to come from zinc and lead, where existing mine capacity is expected to peak in 2014. Environmentally challenged base metals, like tin, should be in line with the sector average. For nickel and aluminum, ample production capacity should lead to an underperformance in the long run. Due to its high current price versus production costs, copper should lag too.

Heavy industrial activity in China, with high commodity use, slumped



Source: Bloomberg, UBS CIO, as of 18 June 2012

Note: Past performance is not an indication of future returns.

Agriculture

Preference: underweight

Current (25 June) (last month): **Soybeans, USD 14.79/bu** (USD13.82/bu); **Corn, USD 6.09/bu**(USD 5.79/bu); **Wheat, USD 6.91/bu** (USD 6.80/bu)

UBS View **6-month target: Soybeans, USD 13.5/bu; Corn, USD 5.10/bu; Wheat, USD 6.00/bu**

- Besides the overall commodity price backdrop, prevailing dry weather conditions in the US have been price supportive for the grains and added to firmer prices.
- While weather-related news flows might support grain prices in the short run (downward revisions in grain yield estimates, especially corn), the 6–12 month price outlook remains negative. Global corn inventories should grow beyond 10% in 2012/13. We think this will more than compensate for firmer wheat fundaments (lower inventory estimates) in the coming months. For soybeans, current price levels sufficiently factor in the poor supply figures seen in recent months. This would be especially true, if South American planting gets a boost due to soybeans' relative price improvement.
- A strong supply backdrop for Brazilian coffee along with a weaker BRL has kept coffee prices under pressure. For 2012/13, Brazilian coffee and sugar exports are likely to increase by 12% and 2% y/y respectively, and keep the global market well supplied in 2012. Cotton prices saw some bouts of strength, but demand has yet to work off high inventory levels at 74–75mn bales. With ample inventories and economic conditions at risk, renewed price weakness is likely.

↗ Positive scenario **Soybeans 6-month USD 16/bu**

- Lower acreage and yield figures for the US can tighten the supply backdrop until 1Q 2013 (until the new South American crop comes). On the demand side, higher soybean use for bio diesel in Argentina and strong Chinese imports (improvements in crush margins) are catalysts for prices to rally.

↘ Negative scenario **Soybeans 6-month USD 12/bu**

- Unexpected Chinese government stock sale of soybeans and deteriorating crushing margins for soybean oil/meal production, would leave soybean prices vulnerable to a price correction.

What we're watching	Why it matters
USDA WASDE report (monthly)	US corn yields could be at risk in the upcoming WASDE release. **Key date : 11 July 2012**
Grains stock report (quarterly)	Corn and soybean inventories could be lowered vs. current estimates, reflecting the strong export activity in corn during March–May and higher soybean crushing during the same period. **Key date: 28 September 2012**
USDA crop progress (weekly, Monday)	Dry weather conditions in the US has impacted the crop conditions (rating), which deteriorated in recent weeks.
COT (weekly, Friday)	Investors have scaled back their long exposure in corn. At the present speed, net positions would close in on zero over the next two months.

Recommendations

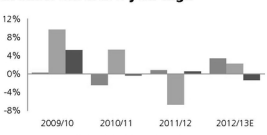
Tactical

- The forward curve in corn already factors in a steep decline by the end of the year, thereby mitigating the expected negative return. With lower corn prices, wheat should come under pressure as well. Most agricultural commodities are generally well supplied, so unless the weather surprises on the downside, we expect further weakness.

Strategic

- Strategic agricultural positions are not recommended at present. Our return outlook for the grains stands at –7.5% to – 5% over the next 12 months. Although the softs have a positive return outlook over the same period, investors should bide their time. Short-term price setbacks of 10% or more are still likely over the next two to three months.

Global corn surplus as % of demand to advance towards 5-year high



Source: USDA, UBS CIO, as of 18 June 2012

Note: Past performance is not an indication of future returns.

Listed real estate

Preference: neutral

UBS Global Index DTR (28 June): 1,375 (last month: 1,320)

UBS View **UBS Global Index DTR (6-month target): 1,400**

- A slight positive monthly performance has been driven by rebounds in the higher beta markets, respectively Hong Kong, Japan and Singapore.
- Listed real estate is still attractively valued on different earnings ratios and trade on a slight discount to NAV. Earnings yields over 5 year swap rate are attractive currently attractive, yet the flattening of interest curves has come to a halt and we see less support from it in the future.
- Little supply of commercial space across the globe leads vacancy rates to gradually decline and low capitalization rates in core markets support capital values. Also rental yields remain attractive compared to high grade bond yields. However, further significant capital appreciation is unlikely. This is especially due a slow down in rental income as economic growth is subdued. Hence, future performance is limited.
- Although slightly reduced, we maintain our preference for US REITs due to stable fundamentals and like Australia as a conservative play. We slightly overweight Hong Kong, stay neutral towards Singapore, but maintain a slight underweight in Japan as fundamentals remain unconvincing.

↗ Positive scenario **UBS Global Index DTR (6-month target): 1,500**

- Improving macroeconomic data in the US, positive economic surprises in Europe followed by monetary easing in China help to increase growth prospects that support rental income growth, while refinancing costs remain low in a low inflation environment. Real estate offers a comparatively attractive yield.

↘ Negative scenario **UBS Global Index DTR (6-month target): 1,300**

- The US growth path disappoints investor expectations and causes the comparatively high valuation levels there to correct, significantly affecting global real estate. Furthermore, a more severe recession in Europe triggers a tightening of credit standards, making listed real estate more dependent than ever on bank financing at a time when credit markets are already fragile. Real estate underperforms global equities because the correlation between the availability of credit and short-term performance is high.

Note: Scenarios refer to global economic scenarios (see slide 7)

What we're watching	Why it matters
Capitalization rates and rental yields	We do not expect capitalization rates to decrease much from now. Rental yields have already been pushed down by decreasing bond yields; we see a diminishing support from the interest curve, which has significantly flattened in the past.
Transaction volumes and future rental growth in direct markets	Global commercial real estate transaction volumes are down year-on-year due to a lack of product in core markets and constraints on debt financing. Global rental growth has softened and very modest growth will feature major markets overall.
Credit markets and financing costs	Lending conditions have been a little tightened. However, well financed listed companies have still good access to credit, while others are more restricted.

Recommendations

Tactical (6 months)

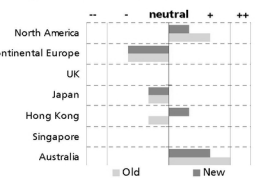
- We maintain our neutral stance towards listed real estate after a good performance year-to-date and due to a relative less attractive valuation compared to global equities. Going forward returns are limited by subdued revenue growth. However, we still expect listed real estate to stay comparatively attractive in a low growth, low rates environment.

Strategic (1 to 2 years)

- A cyclical slowdown in rents limits growth, but attractive refinancing conditions are supportive. We see potential for higher payout ratios in the US and Asia, while Europe has to consolidate balance sheets.

Preference (6 months)

Our market preferences for listed real estate*



* This is our relative preference within the global real estate sector based on UBS Global Real Estate Index domestic total return, which is not the overall sector view

Source: UBS CIO, as of 26 June 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Thomas Veraguth, thomas.veraguth@ubs.com

Please see important disclaimer and disclosures at the end of the document.

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Hedge funds

UBS View **Prefer Relative value and Event-driven**

• We expect hedge funds (HF) to offer positive asymmetric returns characteristics vs. the S&P 500 due to active management and stop-loss strategies. (HF were down 1.9% in May 2012 vs MSCI world at –8.5%)
• Decelerating global growth prospects, the next leg in the ongoing Eurozone crisis, is challenging mostly equity long-short managers, who are net-long the market. While event-driven managers share some of the performance drivers, idiosyncratic bets (event) reduce the exposure to markets. The real reason to own this strategy, however, is the potential for out-sized return in distressed, high yield and other credit investments as the Eurozone crisis plays out. The inherent hedging in relative-value should remain appealing. Credit relative-value managers should perform well in this environment of higher fixed income volatility and increasing pricing anomalies created by central bank interventions (OT2) and limited competition.

↗ Positive scenario **Prefer Equity long-short**

• A reduction of uncertainty (e.g. resolution in Europe) lowers equities' correlation and volatility. This helps bottom-up fundamental analysis and equity long/short managers the most. Also, CEOs will likely make more corporate transactions that can be monetized by event-driven managers, and a clearer macroeconomic environment with more persistent trends would be supportive for macro managers

↘ Negative scenario **Prefer Trading (Global Macro + CTA)**

• A 2011-type scenario in which hedge fund managers get whipsawed through the year with risk-on and risk-off circumstances, driven by a multitude of political interventions, is difficult to anticipate. That would impact long-short managers, event-driven, and to a lesser extent global macro managers.

Note: Scenarios refer to global economic scenarios (see slide 7)

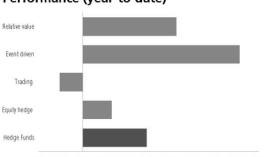
What we're watching	Why it matters
Global equity direction / economic cycle	The outlook for global equities becomes an important HF performance driver. The economic cycle impacts the strategies differently.
Correlation	Correlation among pair-stocks; an important performance/alpha driver for equity long/short, the largest HF strategy by assets under management.
Leverage	Gross and net leverage are key to monitoring risk.
Volatility	The direction influences certain HF strategies (e.g. convertible arbitrage).
Liquidity	Particularly for large HF that are less nimble to enter and exit their strategies
Regulation	Volcker's rule, USCITS III/IV

Recommendations

Strategic (1 to 2 years)

- Active risk management is instrumental for capital preservation during adverse market conditions. At the moment, we therefore favor relative value and event-driven strategies, since they are less hinged to equity markets and other risky assets than trading is.
- Value proposition: Hedge funds should achieve robust performance over an extended horizon, while displaying limited volatility vis-à-vis equities and other risky assets, in general. Hedge funds minimize downside losses in adverse market conditions (e.g. active risk management) and play a crucial role in wealth appreciation, since there is less ground to regain in the recovery phase and ultimately greater chances for superior long-term returns.

Performance (year-to-date)



Source: HFRI, UBS CIO, as of 18 June 2012

Note: Past performance is not an indication of future returns.

For further information please contact CIO's asset class specialist Cesare Valeggia, cesare.valeggia@ubs.com

Please see important disclaimer and disclosures at the end of the document.

HOUSE_OVERSIGHT_024175

Private Equity

Prefer small/mid-cap buyout in US / emerging markets; distressed debt in Europe

UBS View

• Private equity deals in today's volatile and uncertain markets are conservatively financed, with an average equity cushion of 40%. We like mid-market buyout strategies, which offer long-term exposure to attractive corporate assets and which rely less on large bank debt syndications.
• Our house view sees large parts of Europe in a stagnation, and business owners are reluctant to sell their companies, reducing PE deal flow in the region significantly. We therefore prefer North America, which will see continuous (albeit suboptimal) growth, and emerging markets, which show positive fundamentals.
• Prices for PE transactions have corrected by around 10% this year, although they are still 20% above the attractive levels seen during the successful years between 2000 and 2004. However, significant dry powder and high cash positions at corporations keep competition high and hinder prices from falling much further.

↗ Positive scenario

Prefer small-/mid-cap buyout and secondaries

• An abating Eurozone debt crisis and improved business confidence would increase deal flow and exit opportunities for private equity managers, but would also increase entry prices. In such a positive scenario, we would perceive commitment strategies to secondary funds as attractive for building exposure to an invested private equity portfolio.

↘ Negative scenario

Prefer distressed debt

• A renewed escalation of the debt crisis would significantly impact deal activity, the availability of debt and company owners' willingness to sell. At the same time, it would offer attractive opportunities within distressed strategies and lower entry prices for long-term private equity investors.

Note: Scenarios refer to global economic scenarios (see slide 7)

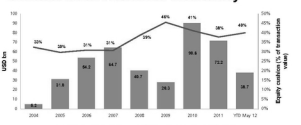
What we're watching	Why it matters
Credit markets	Availability of leverage and credit spreads are important signs of the health of buyout markets. Small/mid caps are currently financed at 4.3x EBITDA (vs 4.6x for large-caps) and are more attractive given their lower reliance on bank financing in a period of ongoing bank deleveraging.
Capital overhang	We track deal/exit activity to understand the pressure to invest, future price dynamics and draw-down profiles for investors. More than USD 930bn of un-invested capital and expiring investment periods will keep prices elevated.
Purchasing prices (Enterprise value / EDITDA)	Price multiples offer valuable insight into private company valuations. YTD May 2012, buyouts occurred at 8.1x, down from 8.8x seen in 2011. Large-cap buyouts have come down 10% from the peak last year to 8.6x.

Recommendations

Strategic (1 to 2 years)

- We prefer small-/mid-cap buyouts in North America given the better economic outlook vs Europe, higher transaction certainty and more attractive entry prices.
- Investors looking for downside protection and stability during economic uncertainties can consider large-cap buyouts in the US, which offer exposure to large, diversified companies at more attractive prices.
- In Europe, the crisis and ongoing deleveraging have led to attractive opportunities for special situations. We thus recommend investing in distressed debt to benefit from the macroeconomic adjustment process and selling pressure for many European banks.
- We advise investors make an ongoing allocation to private equity in emerging markets, which offer an attractive way to capture superior long-term growth and provide access to small/mid-cap companies not available through the stock market.

Private equity deals continue to be defensively financed amidst economic uncertainty



Source: S&P, UBS CIO, as of May 2012

Note: Past performance is not an indication of future returns.

UBS

For further information please contact CIO's asset class specialist Stefan Brägger, stefan.braegger@ubs.com

Please see important disclaimer and disclosures at the end of the document.

Note: We emphasize the equal importance of fund manager selection and the commitment strategy. Please note that private equity is an illiquid asset class and must be held at least until the end of the fund (10+ years). Please note that UBS might not have a product available which reflects our UBS CIO private equity recommendations. Private equity is only suitable for qualified investors (> USD 5m investable assets).

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PROGRAMME FOR THE PRESIDENT AND FIRST LADY FOR THE 67th UNITED NATIONS GENERAL ASSEMBLY
22-29 SEPTEMBER
NEW YORK

Saturday, 22 September 2012

02.15 PM: **President Arrives In JFK**
- *Flight # EK 201*
- *Composition of the motorcade.*
  - *Car 1: President + First Lady*
  - *Car 2: PR + Counsellor Javed*
- *Departs to Helmsley Hotel, 42nd street between 2nd and 3rd Ave*

08.00 PM – 10:30 PM: **Private Dinner**
- *Helmsley Hotel*

Sunday, 23 September 2012

08:00 AM – 09:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

12:30 PM – 01:30 PM: **Private Lunch**
- *Helmsley Hotel*

02.10 PM – 2.25 PM: **Bilateral with the Secretary- General.**
- *Location: 3rd Floor NLB, UNHQ (Walking distance)*
- *President+ Foreign Minister + State Minister + AG+ PR+ Aliny*

08.00 PM – 10:30 PM: **Private Dinner Event – Jeffrey Epstine**
- *Composition of the motorcade.*
  - *Lead car: President*

Monday, 24 September 2012

8:00 AM – 9:30 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

10.00 AM – 05.00 PM: **High Level Segment on Rule of Law**
- *Location: UN Headquarters. (Walking distance)*
- **20th speaker, apprx 11.40 am**
- *President+ Foreign Minister + State Minister + AG+ Ambassador Rasheed +PR*

12:30 PM – 01:30 PM: **Private Lunch**

- *Helmsley Hotel*

04.00 PM- 04.45 PM: **UNDP Administrator.**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President+ Foreign Minister + Environment Minister + AG + Ambassador Rasheed + PR*

06.15 PM: **Depart Hotel to President Obama's Reception**

07.00 PM: **President Obama's Reception**
- *Location: Starlight Roof, The Waldorf Astoria Hotel, 301 Park Avenue, New York*
- *President + First Lady*

08.00 PM – 11:00 PM: **Private Dinner**
- *Helmsley Hotel*

Tuesday, 25 September 2012

7:00 AM – 7:30 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

07.30 AM: **Depart from Hotel to UNHQ (Walking distance)**

08.00 AM – 08.50 AM: **Welcoming reception hosted by the Secretary-General**
- *Location: Indonesian Lounge, UNHQ*
- *President + First Lady*

09.00 AM: **Opening of the General Assembly**
- *Location: UNHQ*
- *President+ Foreign Minister + Environment Minister + AG + State Minister+ PR*

01.15 PM: **Luncheon in honour of Heads of State hosted by the Secretary -General**
- *Location: Visitors Lobby, UNHQ*
- *President*

03.00 PM- 03.35 PM: **Executive Director of UN-Women, Ms. Bachelet.**
- *Location:* 220 East, 42nd Street, 19th Floor.
- *President+ State Minister + Environment Minister + AG+ Nee*

04.00 PM: **Tea Reception hosted by Mrs. Ban Soon-taek for spouses.**
- *Location: SG's Residence, 3 Sutton Place and 57th Street.*
- *First Lady*

04.45 PM- 05.15 PM: **UNICEF Executive Director, Anthony Lake**
- *Location:* UNICEF Building, 13th Floor
- *President+ Foreign Minister + State Minister + Ambassador Rasheed + PR +Aliny*

06.00 PM – 07.30 PM: **Reception hosted by Prime Minister of Australia**
- *Location: Ambassador's Riverview, UN Headquarters*

- *President + Foreign Minister + PR*

08.00 PM – 11:00 PM: **Private Dinner**
- *Helmsley Hotel*

Wednesday, 26 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

9.00 AM – 11.00 AM: **Museum Tour hosted by Mrs Ban Soon-taek**
- *Location: Morgan Library 225 Madison Ave. + 36th street*
- *First Lady*

09.30 AM- 11.00 AM: **2012 Launch of the Climate Vulnerability Monitor**
Invitation received from Prime Minister of Bangladesh
- *Location: Asia Society, 725 Park Avenue (at 70th Street)*
- *President + Foreign Minister + Environment Minister+ PR*

11.30 AM- 12.00 PM: **Tanzania Foreign Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President +Foreign Minister + State Minister+ AG + PR+ Aliny*

01.15 PM – 03.00 PM: **South Africa Reception, hosted by the President of South Africa**
- *Location: Ambassador's Riverview, UN Headquarters.*
- *President+ Foreign Minister + PR*

03.00 PM- 03.30 PM: **Trinidad and Tobago Foreign Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President + Foreign Minister + State Minister + Amb Rasheed + PR + Aliny*

04.15 PM – 05.00 PM: **Meeting with Commonwealth Secretary General, H.E Mr. Kamalesh Sharma.**
- *Location: Commonwealth Joint Office Large Conference room.*
- *President+ Foreign Minister + State Minister + AG+ PR+ Aliny*

05.00 PM: **Visit to the Permanent Mission of Maldives**
- *Location: 800 2nd Ave. 4th Floor*
- *President+ Entire Delegation*

06.00 PM – 08.00 PM: **Reception hosted by Luxembourg, in honor of His Royal Highness Grand Duke Henri. (TBC)**
- *Location: Permanent Mission of Luxembourg, Luxembourg House, 17 Beekman Place, NY 10022*
- *President + PR*

08.30 PM: **Cyprus: Musical Philoxenia hosted by the President of Cyprus**
- *Location: Alice Tully Hall, Starr Theater, 1941 Broadway on 65th street.*
- *President+ PR+ FM+ Spouses*

11.00 PM – 12:00 AM: **Private Dinner**

- *Helmsley Hotel*

Thursday, 27 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**

- *Helmsley Hotel*

09.00 AM- 09.30 AM: **Vanuatu Prime Minister**

- *Location: bilateral booth at the UN.(Walking distance)*
- *President + Foreign Minister+ State Minister +AG+ PR +Aliny*

09:00AM – 11:30AM **Fifth Annual World Focus on Autism**

- *Location: The Prestigious Roosevelt House*
- *First Lady*

10:00AM – 11:30AM **Feed the Future: Partnering with Civil Society hosted by the President of Malawi and Hillary Clinton.**

- *Location: The Empire Room, Waldorf Astoria, 301 Park Ave.*
- *President, Foreign Minister and PR*

12:30 PM – 01:30 PM: **Private Lunch**

- *Helmsley Hotel*

03.00 PM – 09.00 PM: **General Debate**

- *Location: General Assembly, UN Headquarters*
- Approx. 4 pm
- *President+ Foreign Minister + State Minister + AG+ PR+ Ali Rasheed*
- *Maldives has the 4th speaking slot.*

03.00 PM – 06.00 PM: **2nd AOSIS Leaders Summit**

- *Location: Helmsley Hotel*
- *President+ Environment Minister + Hassan*

06.30 PM: **Sierra Leone Foreign Minister**

- *Location: bilateral booth at the UN.(Walking distance)*
- *President +Foreign Minister + State Minister+ AG + PR+ Aliny*

06.30 PM – 08.30 PM: **Reception hosted by Nauru (Chair of AOSIS)**

- *Location: Helmsley Hotel*
- *President+ Environment Minister + PR*

08.30 PM – 11:00 PM: **Private Dinner Event**

- *Helmsley Hotel*

Friday, 28 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**

- *Helmsley Hotel*

09.00 AM – 10.30 AM: **CMAG Meeting**

- *Location: Australian Mission*
- *President*

12.15 PM- 12.45 PM: **President of the General Assembly**

- *Location:* GA 200 (Behind GA Hall) UNHQ
- *President+ Foreign Minister+ PR+ Aliny*

04.00 PM: **OHCHR**

- *Location: TBC*
- *President+ AG*

06.00 PM – 07.30 PM: **Commonwealth Reception hosted by Australia. (TBC) (RSVP)**

- *Location:1 Beekman Place, New York, NY 10022*
- *Head of Delegation + Foreign Minister +PR*

08.00 PM – 11:00 PM: **Private Dinner**

- *Helmsley Hotel*

Saturday, 29 September 2012

8:00 AM – 9:30 AM: **Breakfast with Maldivian Delegates**

- *Helmsley Hotel*

1.45 PM: **President Depart from JFK to LAX (TBC)**

- *Flight #AA 117*
- *Composition of the motorcade.*

Itinerary of President Waheed and Madam Ilham

EK	**659**	**21SEP MLE/DXB**	**1000**	**1300**
EK	**201**	**22SEP DXB/JFK**	**0830**	**1415**
AA	**117**	**29SEP JFK/LAX**	**1345**	**1655**
EK	**216**	**5OCT LAX/DXB**	**1645**	**1935** ** Arriving 06th October

PROGRAMME FOR LOS ANGELES SEGMENT
29TH SEPTEMBER – 5TH OCTOBER
NEW YORK

Saturday, 29 September 2012

04.55 PM: **HEP Arrives In LAX**
- *Flight # AA 117*
- *Extended Port Courtesies*

7.00 PM: **Dinner at Navarro's house**
- *Sstay at Shilo Hilltop Suites Hotel or alternative*

Sunday, 30 September 2012

xxx **Sail to Catalina Island, stay in Avalon (several hotels to choose from)**
-

Monday, 1 October 2012

xxx **Explore Avalon, 2nd night in Avalon**
-

Tuesday, 2 October 2012
Xxx **Sail or motor to another part of the island and return to Avalon, 3rd night in Avalon**
-

Wednesday, 3 October 2012
xxx **Sail back to Newport Beach, Stay in Anaheim, close to Disneyland (several hotels to choose from)**
-

Thursday, 4 October 2012
xxx **Disneyland, 2nd night in Anaheim**
-

Friday, 5 October 2012
04.45 PM: **HEP Departs LAX**
- *Flight # EK 216*
- *Extended Port Courtesies*

PROGRAMME FOR 67th UNITED NATIONS GENERAL ASSEMBLY
18 SEPTEMBER – 20 DECEMBER 2012
NEW YORK

Friday, 21 September 2012

08.30 AM: **Working Breakfast hosted by Ireland, Mary Robinson**
- *Location: One Dag Hammarskjold Plaza, 885 2nd Ave. 19th floor*
- *PR*

03.00 PM: **Shabeen's Arrival**
- *Location: JFK*
- *Flight # QR 83*

Saturday, 22 September 2012

02.15 PM: **President Arrives In JFK**
- *Flight # EK 201*
- *Composition of the motorcade.*
  - *Car 1: President + First Lady*
  - *Car 2: PR + Counsellor Javed*
- *Departs to Helmsley Hotel, 42nd street between 2nd and 3rd Ave*

06.47 PM: **H.E. Mohamed Rasheed Arrives**
- *Flight #UA 81*
- *Received by Javed*

08.00 PM – 10:30 PM: **Presidents Private Dinner**
- *Helmsley Hotel*

Sunday, 23 September 2012

08:00 AM – 09:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

12:30 PM – 01:30 PM: **Presidents Private Lunch**
- *Helmsley Hotel*

02.10 PM – 2.25 PM: **Bilateral with the Secretary- General.**
- *Location: 3rd Floor NLB, UNHQ (Walking distance)*
- *President+ Foreign Minister + State Minister + AG+ PR+ Aliny*

06.00 PM: **South-South Awards**

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- *Location: The Waldorf Astoria Hotel, 301 Park Avenue, New York*
- *PR*

08.00 PM – 10:30 PM: **Presidents Private Dinner Event – Jeffrey Epstine**
- *Composition of the motorcade.*
  - *Lead car: President*

Monday, 24 September 2012

8:00 AM – 9:30 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

08.15 AM – 10.00 AM: **Peaceful Settlement of Conflict, hosted by Netherlands (TBC)**
- *Location: Delegates Dining Room, UN Headquarters.*
- *Foreign Minister*

10.00 AM – 05.00 PM: **High Level Segment on Rule of Law**
- *Location: UN Headquarters. (Walking distance)*
- **20th speaker, apprx 11.40 am**
- *President+ Foreign Minister + State Minister + AG+ Ambassador Rasheed +PR*

12:30 PM – 01:30 PM: **Presidents Private Lunch**
- *Helmsley Hotel*

01.15 PM – 02.45 PM: **High Level Lunch Event on Women's Access to Justice, hosted by UN Women, HoD of Finland and South Africa (TBC)**
- *Location: Ambassador's Riverview, UN Headquarters.*
- *AG*

02.00 PM- 02.30 PM: **Jamaica Foreign Minister (Confirmed)**
- *Location:* TBC
- *Foreign Minister*

03.00 PM- 06.00 PM: **High-level meeting on sustainable energy for all. (Confirmed)**
- *Location*: NLB 2 UNHQ.
- *Environment Minister+ Di (Speaking slot 10)*

04.00 PM- 04.45 PM: **UNDP Administrator.**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President+ Foreign Minister + Environment Minister + AG + Ambassador Rasheed + PR*

06.15 PM: **Depart Hotel to President Obama's Reception**

07.00 PM: **Obama's Reception (Confirmed)**
- *Location: Starlight Roof, The Waldorf Astoria Hotel, 301 Park Avenue, New York*
- *President + First Lady*

08.00 PM – 11:00 PM: **Presidents Private Dinner**
- *Helmsley Hotel*

Tuesday, 25 September 2012

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7:00 AM – 7:30 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

07.30 AM: **Depart from Hotel to UNHQ (Walking distance)**

08.00 AM – 08.50 AM: **Welcoming reception hosted by the Secretary-General**
- *Location: Indonesian Lounge, UNHQ*
- *President + First Lady*

09.00 AM: **Opening of the General Assembly**
- *Location: UNHQ*
- *President+ Foreign Minister + Environment Minister + AG + State Minister+ PR*

11.30 AM – 12.00 PM: **Meeting with Commonwealth Deputy Secretary General, Mrs. Mmasekgoa Masir- Mwamba.** **(Confirmed)**
- *Location: Commonwealth Joint Office Large Conference room.*
- *State Minister+ Aliny+ Di*

01.15 PM: **Luncheon in honour of Heads of State hosted by the Secretary -General**
- *Location: Visitors Lobby, UNHQ*
- *President*

03.00 PM- 03.35 PM: **Executive Director of UN-Women, Ms. Bachelet.**
- *Location:* 220 East, 42nd Street, 19th Floor.
- *President+ State Minister + Environment Minister + AG+ Nee*

03.30 PM: **Shiaan arrives in JFK**
- *Flight # BA 1588*
- ……..

04.00 PM: **Tea Reception hosted by Mrs. Ban Soon-taek for spouses.**
- *Location: SG's Residence, 3 Sutton Place and 57th Street.*
- *First Lady*

04.00 PM- 04.30 PM: **Canada Foreign Minister** **(Confirmed)**
- *Location:* TBC
- *Foreign Minister*

04.30 PM- 05.00 PM: **U.K, Allister Burt** **(Confirmed)**
- *Location:* TBC
- *Foreign Minister*

04.45 PM- 05.15 PM: **UNICEF Executive Director, Anthony Lake**
- *Location:* UNICEF Building, 13th Floor
- *President+ Foreign Minister + State Minister + Ambassador Rasheed + PR +Aliny*

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06.00 PM – 07.30 PM: **Reception hosted by Prime Minister of Australia**
- *Location: Ambassador's Riverview, UN Headquarters*
- *President + Foreign Minister + PR*

EVENING **UN Secretary General Ban Ki-moon's Every Women Every Child reception (TBC)**
Venue: New York Museum of Modern Art
Rishfa: please provide details!

08.00 PM – 11:00 PM: **Presidents Private Dinner**
- *Helmsley Hotel*

Wednesday, 26 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

09:00 AM – 10:00 AM: **Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide**
- *Location: One UN plaza, Riverview room 28th floor*
- *……*

9.00 AM – 11.00 AM: **Museum Tour hosted by Mrs Ban Soon-taek**
- *Location: Morgan Library 225 Madison Ave. + 36th street*
- *First Lady*

09.30 AM- 11.00 AM: **2012 Launch of the Climate Vulnerability Monitor**
Invitation received from Prime Minister of Bangladesh
- *Location: Asia Society, 725 Park Avenue (at 70th Street)*
- *President + Foreign Minister + Environment Minister+ PR*

11.30 AM- 12.00 PM: **Tanzania Foreign Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President +Foreign Minister + State Minister+ AG + PR+ Aliny*

01.15 PM – 03.00 PM: **South Africa Reception, hosted by the President of South Africa**
- *Location: Ambassador's Riverview, UN Headquarters.*
- *Head of Delegation+ Foreign Minister + PR*

01:15 PM – 02:30PM **LDC Agenda in a Post Rio+20 Perspective**
- *Location: NLB 2, UNHQ*
- *Ministerial Level*

01:15 PM – 02:30PM **Freedom of Religion or Belief: An Individual's Choice**
- *Location: NLB 3, UNHQ*
- *Ministerial Level*

03.00 PM- 03.30 PM: **Trinidad and Tobago Foreign Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President + Foreign Minister + State Minister + Amb Rasheed + PR + Aliny*

03.00 PM- 06.00 PM: **Parliaments and the Rule of Law: Toward Justice for**

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All, Organized by IPU(Confirmed)
- *Location:* Conference room 3 NLB, UNHQ
- *Nihan+ AG+ Shabeen*

04.15 PM – 05.00 PM: **Meeting with Commonwealth Secretary General, H.E Mr. Kamalesh Sharma.**
- *Location: Commonwealth Joint Office Large Conference room.*
- *President+ Foreign Minister + State Minister + AG+ PR+ Aliny*

05.00 PM: **Visit to the Permanent Mission of Maldives**
- *Location: 800 2nd Ave. 4th Floor*
- *President+ Entire Delegation*

06.00 PM – 08.00 PM: **Reception hosted by Luxembourg, in honor of His Royal Highness Grand Duke Henri. (TBC)**
- *Location: Permanent Mission of Luxembourg, Luxembourg House, 17 Beekman Place, NY 10022*
- *President + PR*

06.00 PM – 08.00 PM: **Reception hosted by E.U, Inaugurating new premises. (TBC)**
- *Location:666 Third Avenue, 31st floor, NY 10017*
- *Foreign Minister+ Javed*

06.30 PM – 08.30 PM: **Reception hosted by U.A.E, hosted by the Minister of Foreign Affairs of U.A.E (TBC)**
- *Location: Morgan Library and Museum, 225 Madison Ave.*
- *Environment Minister*

08.30 PM: **Cyprus: Musical Philoxenia hosted by the President of Cyprus**
- *Location: Alice Tully Hall, Starr Theater, 1941 Broadway on 65th street.*
- *President+ PR+ FM+ Spouses*

11.00 PM – 12:00 AM: **Presidents Private Dinner**
- *Helmsley Hotel*

Thursday, 27 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

08.00 AM – 09.30 AM: **Increase Peace through Mediation, co-hosted by Finland and Turkey (TBC)**
- *Location: Consulate General of Finland, 866 United Nations Plaza, Suite 250, New York, NY*
- *Ministerial Breakfast*

09.00 AM- 09.30 AM: **Vanuatu Prime Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President + Foreign Minister+ State Minister +AG+ PR +Aliny*

09:00AM – 11:30AM **Fifth Annual World Focus on Autism**

HOUSE_OVERSIGHT_024189

- *Location: The Prestigious Roosevelt House*
- *First Lady*

10:00AM – 11:30AM **Feed the Future: Partnering with Civil Society hosted by the President of Malawi and Hillary Clinton.**
- *Location: The Empire Room, Waldorf Astoria, 301 Park Ave.*
- *President, Foreign Minister and PR*

10.00 AM- 10.45 AM: **Palestine Foreign Minister (Confirmed)**
- *Location:* Booth Requested
- *Foreign Minister+ PR+ Javed+ Nee*

10:00 AM – 01:00 PM: **The Civil Society and the Education on Human Rights**
- *Location: NLB 5, UNHQ*
- *AG+ Shabeen+ Javed+ Nee+ Di*

11:00AM – 01:30 PM: **High-Level launch of United Nations Guidance for Effective Mediation**
- *Location: 821 UN Plaza 8th floor*
- *Foreign Minister*

12:30 PM – 01:30 PM: **President Private Lunch**
- *Helmsley Hotel*

03.00 PM – 09.00 PM: **General Debate**
- *Location: General Assembly, UN Headquarters*
- Approx. 4 pm
- *President+ Foreign Minister + State Minister + AG+ PR+ Ali Rasheed*
- *Maldives has the 4th speaking slot.*

03.00 PM – 06.00 PM: **2nd AOSIS Leaders Summit**
- *Location: Helmsley Hotel*
- *President+ Environment Minister + Hassan*

06.30 PM: **Sierra Leone Foreign Minister**
- *Location: bilateral booth at the UN.(Walking distance)*
- *President +Foreign Minister + State Minister+ AG + PR+ Aliny*

06.30 PM – 08.30 PM: **Reception hosted by Nauru (Chair of AOSIS)**
- *Location: Helmsley Hotel*
- *President+ Environment Minister + PR*

06.30 PM – 08.30 PM: **Reception hosted by Indonesia (TBC) (Need to RSVP)**
- *Location: 325 East 38th Street, New York, NY 10016*
- *Foreign Minister + PR*

06.30 PM – 08.30 PM: **Art for Reconciliation, reception hosted by Georgia**
- *Location: Bohemian National Hall, 321 East 73 street NY 10023*
- *PR*

08.30 PM – 11:00 PM: **Presidents Private Dinner Event**

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- *Helmsley Hotel*

Friday, 28 September 2012

8:00 AM – 9:00 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

09.00 AM – 10.30 AM: **CMAG Meeting**
- *Location: Australian Mission*
- *President*

10.00 AM: **H.E. Mohamed Rasheed, Departure**
- *Flight #UA 755*

09.00 AM – 01.15 PM: **High- Level meeting on Countering Nuclear Terrorism**
- *Location: GA Hall, UN Headquarters.*
- *PR*

12.15 PM- 12.45 PM: **President of the General Assembly**
- *Location:* GA 200 (Behind GA Hall) UNHQ
- *President+ Foreign Minister+ PR+ Aliny*

01.15 PM – 03.00 PM: **Climate Change and their impact on foreign and security policy, hosted by Germany and Kingdom of Morocco.**
- *Location: TBC*
- *PR*

04.00 PM: **OHCHR**
- *Location: TBC*
- *President+ AG*

06.00 PM – 07.30 PM: **Commonwealth Reception hosted by Australia. (TBC) (RSVP)**
- *Location:1 Beekman Place, New York, NY 10022*
- *Head of Delegation + Foreign Minister +PR*

08.00 PM – 11:00 PM: **Presidents Private Dinner**
- *Helmsley Hotel*

Saturday, 29 September 2012

8:00 AM – 9:30 AM: **Breakfast with Maldivian Delegates**
- *Helmsley Hotel*

09.00 AM – 04.00 PM: **Commonwealth Foreign Ministers Meeting**
- *Location: Helmsley Hotel*
- *Foreign Minister +PR*

01.45 PM: **President Depart from JFK to LAX**
- *Flight # AA 117*
- *Composition of the motorcade.*

07.00 PM: **Delegation Depart from JFK**
- *Flight # DL82*

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- ……

11.40 PM: **Shabeen's Departure**
- *Location: JFK*
- *Flight # QR 84*

Monday, 1 October 2012

10.00 AM- 06.00 PM: **Forum of Small States (FOSS) Conference on Small States**
Location: UN North Lawn Building, Conference Room 3
FM+PR

Around 04.00 PM: **Singapore Foreign Minister (Confirmed)**
- *Location: on sidelines of FOSS, UN North Lawn Building, Conference Room 3*
- *Foreign Minister*

Tuesday, 2 October 2012

10.00 AM- 10.30 AM: **Bilateral Meeting with H.E Ms. Heidi Hautala, Minister of International Development of Finland (Confirmed)**
- *Location:* Booth Requested
- *Foreign Minister+ Aliny +PR+ Nee*

1.00 PM: **SAARC Informal Luncheon/ Meeting**
- *Location: Helmsley Hotel*
- *Foreign Minister +PR*

11.00 PM: **Minister of Foreign Affairs depart from JFK**
- *Flight # EK 202*

Thursday, 4 October 2012

11.20 AM: **Aliny's Departure**
- *Location: JFK*
- *Flight # EK 204*

Incoming Requests

TBC: **Christian Mission for the United Nations Community (TBC)**
- *Requesting a meeting with HEP*

Between 24th & 29th Sep: **Bilateral with Georgia Foreign Minister (TBC)**
- *Location: TBC*
- *Foreign Minister*
- *Contact: Ms. Neli Shiolashvili, Tel: 212 759 1949*
Email:n.shiola@gmail.com

TBC: **Publisher & Editor PODER Magazine (TBC)**
- *Requesting a meeting with HEP*

24-28 September **Bilateral Meeting with H.E Mr. Kim Sung- Hwan, Minister of Foreign Affairs of South Korea**

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Contact: Mr. Ileung Kim, First Secretary, PM/Korea
212-439-4087, iekim99@mofat.go.kr
Ms. Sun A Yoon, 212-439-4059, yoons.rok.un@gmail.com

Bilateral Requests sent

His Excellency the President (22 September – 29 September 2012)

- **India**
- **Sri Lanka**
- **Pakistan**
- **Nepal**
- **Bangladesh**
- **Afghanistan**
- **Bhutan**
- **Australia**
- **Canada (not available)**
- **China**
- **Japan**
- **USA**
- **Germany**
- **Denmark**
- **World Bank**

His Excellency Dr. Abdul Samad Abdulla, Minister of Foreign Affairs (22 September – 5 October 2012)

- **United States**
- **Russia. (Informed not possible)**
- **Turkey,**
- **Malaysia,**
- **UAE**

Her Excellency Dr. Mariyam Shakeela, Minister of Environment and Energy

- **Sri Lanka**
- **Clinton Foundation**

Her Excellency Aishath Azima Shakoor, Attorney General (22 September – 29 September 2012) (Delegates attending Rule of Law Meeting)

- **Australia**
- **Canada**
- **UK**
- **World Bank *(if attending Rule of Law Meeting)***

HOUSE_OVERSIGHT_024193

The most important energy developments of 2012: how countries are planning for Independence Day

First, a few updates:

- It looks like sub-2.5% global GDP growth is showing up in the weak outlook provided by some **bell-weather cyclical companies** that reported so far (AMD, APD, BHI, CAT, ETFC, GE, GOOG, IBM, MCD, MSFT, PH). We're about to see how resilient an equity market is when one of its key selling points is how expensive bonds are. The recent pick-up in leading indicators suggests that earnings expectations may stabilize early in the new year.
- September US retail sales were strong and US **housing** data continue to improve, although as noted last week, the degree of housing's contribution to growth remains the big question. There will be economic headwinds next year even if the fiscal cliff is negotiated down. See October 9th EoTM for the full Monty on the fiscal cliff mechanics.
- We modeled the **President's tax proposals** on various demographics of high net worth taxpayers[1]. The results: increases in effective tax rates (as % of adjusted gross income) from 4% to 12%, depending on income, investible assets, stock-bond ownership, state of domicile, etc. It's unlikely to be enacted as scripted unless there's a Democratic sweep, but its contours probably indicate where HNW taxation is eventually heading. We don't have enough info to analyze Romney's tax plan in comparable detail. On the latter, the Tax Policy Center released a study indicating that capping itemized deductions at $25k for all taxpayers only offsets 32% of the estimated revenue loss from a 20% reduction in income tax rates.
- Production, capital spending and export data from **China** show improvement from the weak pace over the summer, although details reveal a continued decline in manufacturing growth offset by rising gov't infrastructure spending. China ran a 600 billion RMB budget *surplus* through September, and targets an 800 bn RMB budget *deficit* this year. I wouldn't argue that all that gov't spending is going to have a huge productivity benefit, but it should keep things moving. Chinese earnings growth and business climate surveys remain weak, an unsurprising consequence of excess industrial capacity.
- In **Europe**, financial markets continue to rally in the Periphery. Five -year Spanish credit spreads have fallen below 3% from over 6% last July, and without the ECB firing a single shot (e.g. buying any bonds). The economic data is still bad (a collapse in auto sales similar to 2009), but now it's just "run-of-the-mill" terrible instead of "look-out-for-that-bank/country-it's-about-to-default" terrible. What is impossible to assess: the ability of Southern Europe to withstand rising social and political pressures of massive unemployment. Also: watch out for France, where there is a large, growing economic gap vs. Germany, and where its President is resisting German demands for centralized budgetary supervision.

Our annual energy discussion with Vaclav

Every year, I sit down with Vaclav Smil from the University of Manitoba to discuss "the year in energy". Vaclav is one of the world's foremost experts on energy issues, and has written over 30 books and 300 papers on the subject. In this note, we walk through what Vaclav identified as the 5 notable energy developments of 2012[2]: **energy independence initiatives in the US, Europe and Japan; geopolitical implications of rising Chinese oil demand; and another rough year for the electric car**.

The political backdrop in the Middle East, European concerns about natural gas dependence on Russia, and lingering concerns about nuclear power after Fukushima are factors driving countries to seek greater energy independence. In the US, prospects for energy independence rely mostly on domestically produced oil and natural gas, while in Europe and Japan, they rely on rising renewable energy targets. What's remarkable is the official sector confidence in Germany and Japan that the transition cost to renewables will be manageable. One indicative data point: the cost of building connections between offshore wind farms and the electricity grid (*excluding* the cost of the wind turbine itself) can be greater than the cost of building an entire brand new natural gas plant. As always, a renewable energy discussion involves facts, figures, emotion and a large dose of the unknown.

The outcome will have important consequences for growth, the cost and availability of electricity and the global balance of payments. These developments argue for greater growth and productivity potential in the US, although energy costs are just one part of the larger economic and profits equation. Even among US manufacturing companies, energy generally represents only 5% of total expenses, and is dwarfed by labor costs.

Michael Cembalest
J.P. Morgan Asset Management

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[1] **Proposed changes affecting U.S. high net worth taxpayers**: increased tax rates on ordinary income, dividends and realized capital gains; increased Medicare taxes on earned and unearned income; rising limitations on itemized deductions (state & local taxes, mortgage interest and charitable deductions); partial inclusion of municipal income, 401k contributions and employer-paid health benefits in taxable income.

[2] Other items we could have discussed: continued growth of global hydropower, politics around the Keystone XL pipeline, the apparent end of Exxon's collaboration with Craig Venter to develop fuels from genetically modified algae, and the EU's decision to deemphasize crop-based biofuels due to concerns about greater carbon emissions than the diesel they replace, and high food prices.

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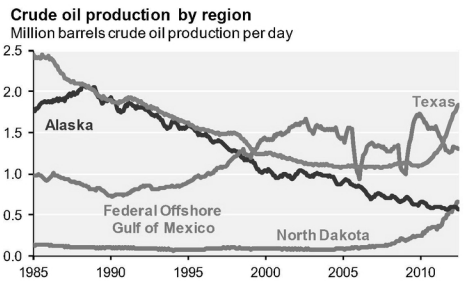
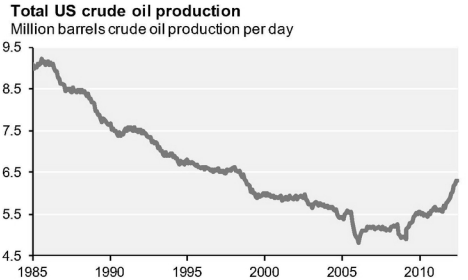
The most important energy developments of 2012: how countries are planning for Independence Day

I: What might US energy independence look like?

Rising crude oil production in Texas and North Dakota has contributed to a reversal of the long-term US production decline. The latest data (June 2012) show North Dakota now ahead of Alaska's North Slope.

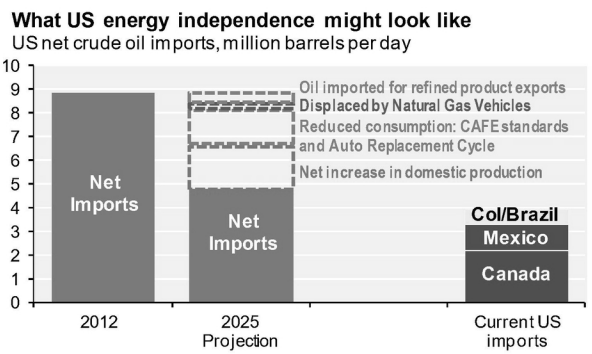


Source: US Energy Information Administration.



Source: US Energy Information Administration.

The growth in US domestic production is notable, but on its own insufficient to result in energy independence since the US still imports ~9 mm bpd of oil. But when combined with other factors affecting demand and supply, the concept of energy independence comes into view over the next couple of decades. **What is "energy independence"?** After some adjustments (and I may be underestimating some of them), US net imports could fall to 4-5 mm bpd, a level which can be met by imports from countries with historically reliable economic and political linkages to the US (everything is relative). The point is not that reduced US crude imports will lower oil prices; countries like China with growing oil needs may offset that. **What matters here are the economic and geopolitical benefits from (a) not having to design military and foreign policy objectives based on energy security to the degree the US has over the last 30 years[3], and (b) being able to reap the growth, employment and current account benefits of domestically sourced-oil and natural gas.**



Source: US Energy Information Administration, JPMAM.

For a review of the assumptions in this chart, see page 3; otherwise, skip to page 4.

[3] See "*Addicted to Oil: Strategic Implications of American Oil Policy*" from the Strategic Studies Institute of the U.S. Army. The piece outlines 4 pillars to U.S. national interests: defense of the homeland, promotion of U.S. democratic values, creation of a favorable world order, and enhancement of the nation's economic well-being. According to the authors, each has been negatively impacted by US demand for foreign oil. They believe that U.S. foreign policies that support repressive oil states are diametrically opposed to American values, and reversed the 20th century trend of the U.S. fighting against totalitarianism and in favor of liberty, and in turn caused the U.S. to lose the "war for ideas" that is critical to wining the "war on terror".

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The most important energy developments of 2012: how countries are planning for Independence Day

Some detail on the components of increased US energy independence:

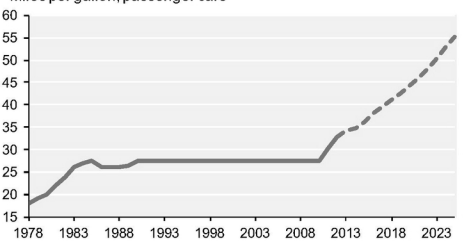
Net increase in domestic production: we have modeled an increase of 1.8 mm bpd. For context, the 2012 Energy Information Administration (EIA) outlook has a variety of crude oil production scenarios for 2025 ranging from no increase to an increase of 2.8 mm bpd (the "technically recoverable resource" case). Any production increase from current levels is expected to come from "tight oil", extracted from formations such as Bakken and Eagle Ford, and the Permian Basin. While conventional crude production volumes in the Gulf may rise, these are expected by the EIA to offset declines elsewhere (Alaska). The EIA's optimism is matched by a June 2012 paper from Leonardo Maugeri at Harvard's Kennedy School, which projects a US crude oil increase of 2.6 mm bpd by 2020. An illustrative quote[4]:

> "**The shale/tight oil boom in the United States is not a temporary bubble, but the most important revolution in the oil sector in decades**. It will probably trigger worldwide emulation over the next decades that might bear surprising results - given the fact that most shale/tight oil resources in the world are still unknown and untapped.… Thanks to the technological revolution brought about by the combined use of horizontal drilling and hydraulic fracturing, the US is now exploiting its huge and virtually untouched shale and tight oil fields, whose production – although still in its infancy – is already skyrocketing in North Dakota and Texas."

Regarding the Bakken shale, Maugeri's estimate of 300 billion barrels of oil in place are exceeded by larger mean estimates from USGS geochemist Leigh Price and Continental Resources.

Reduced consumption due to higher CAFE standards and the automobile replacement cycle: this is a topic that generates a lot of debate and technical discussion about driving patterns, but this much is clear: CAFE standards and the ongoing replacement of older cars will improve the fuel efficiency of the future fleet. The Union for Concerned Scientists has estimated the benefit of CAFE at 3 million barrels of oil per day by 2030, while the Administration's estimate is 2.2 million by 2025. The average 11-year age of US cars is at the highest level on record, up from 8.5 years in 1995. While some of this increase reflects cars with improved lifespans, it also reflects the impact of the recession and pent-up demand to replace older cars. As a result, our estimate of 1.5 mm bpd in oil consumption savings seems reasonable in context.

Corporate Average Fuel Economy standards
Miles per gallon, passenger cars



Source: National Highway Traffic Safety Administration.

Impact of rising penetration of natural gas vehicles: The rationale for natural gas vehicles (NGV) stems from a price per million BTUs for oil that's 5x higher than natural gas. The US NGV penetration rate is low, in part due to the chicken/egg problem of the lack of natural gas refueling stations, and a more limited driving range (natural gas tanks generally hold less energy than diesel tanks). But the economics of NGVs are becoming more compelling for taxis, vans and buses that are centrally fueled with limited ranges, and for trucks with established routes where refueling stations can be built every 300-400 miles. Such heavy-duty vehicles account for 17% of all petroleum usage in the US. An example: a heavy duty 18-wheeler might travel 60,000 miles per year and get 5 mpg (using 12,000 gallons of diesel fuel). Assuming a $1.5 difference between diesel and liquid natural gas prices, a trucking company could save ~ $18,000 in annual fuel costs. The conversion cost to LNG (liquid natural gas) of $70,000 would imply a 4-year payback period, which is short in the scheme of energy trade-offs. We assume a very modest NGV penetration rate of 3%, which translates into reduced oil consumption of 0.3 mm bpd.

Oil imported for export purposes: in 2011, the US exported 0.5 mm bpd in refined petroleum products. As a result, part of the current crude oil import tab is simply for re-export, and is not part of the country's domestic consumption requirement.

[4] "*The Unprecedented Upsurge of Oil Production Capacity and What It Means for the World*", Leonardo Maugeri, Belfer Center for Science and International Affairs, Harvard Kennedy School, June 2012. See sections 5-9 for a discussion of how shale and tight oil are gradually replacing conventional sources, how hydraulic fracking works, a detailed examination of the Bakken Shale, how EIA and USGS data are backward-looking and underestimate potential growth, the challenges for the US refining industry which has invested in the ability to process heavy-sour imports rather than light-sweet oil from shale, pipeline needs and a range of environmental issues. Maugeri was Senior Executive Vice President of Strategies and Development at ENI, and Executive Chairman of Polimeri Europa, ENI's petrochemical branch.

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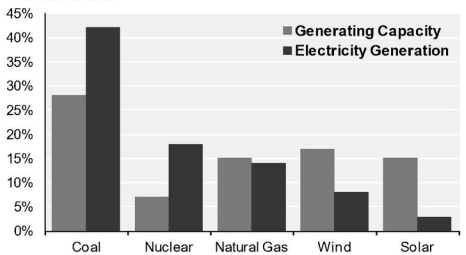
The most important energy developments of 2012: how countries are planning for Independence Day

II: Is Germany making an impetuous mad dash into renewable energy?

In the wake of Fukushima, Chancellor Merkel announced a plan to accelerate the closure of coal and nuclear power plants, with the goal of relying more on renewable energy to fill the gap. Germany is by far the largest user of electricity in Europe and its manufacturing to GDP ratio is high, so the consequences may be substantial. To get a sense of the potential impact, start with the first chart on Germany's current generating capacity and output by source. While wind and solar installations have increased in recent years, their electricity output is less impactful due to wind and solar intermittency.

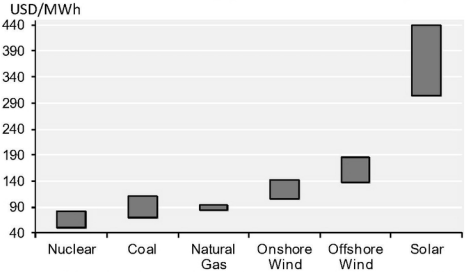
The two largest increases in Germany's renewable plan are offshore wind and photovoltaic (solar). Offshore wind connections are *very* expensive; according to Netherlands-based transmission system operator TenneT, they work out to ~1.1 million Euros per MW, and **that's just for the connection** (not the wind turbine itself, that's extra). That offshore wind connection cost is even higher than the 0.8-1.0 million per MW upfront capital cost of building new natural gas plants, using data from RWE AG (Essen) and SWB AG (Bremen). Wind is free and natural gas isn't, so we should look at **all-in levelized costs**[5] by electricity source. As shown in the second chart, all things considered, offshore wind is a very expensive way for Germany to generate electricity, and solar is higher by another order of magnitude. The relative ordering is similar in other countries.

Snapshot of current German capacity and generation
Percent of total



Source: BDEW Bundesverband der Energie- und Wasserwirtschaft e.V.

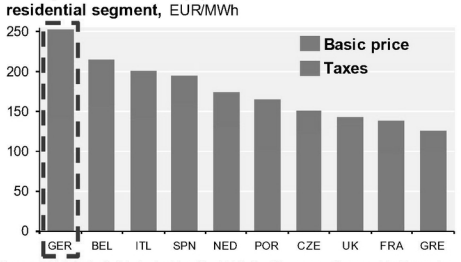
Levelized cost of electricity production in Germany
USD/MWh



Source: International Energy Agency, Nuclear Energy Agency and OECD.

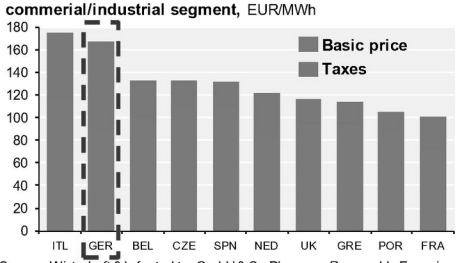
Germany is a very energy-efficient country, and has among the lowest electricity-to-GDP ratios in Europe. **However, the cost of electricity to industrial consumers is already among the highest in Europe when including taxes, and for residential consumers, Germany is the highest**. As a result, the proposed shift to renewable energy may further increase electricity prices for both residential and commercial users. There's not enough data yet to measure the impact so far.

Average retail electricity price in 2011: residential segment, EUR/MWh



Source: Wirtschaft & Infastruktur GmbH & Co Planugs - Renewable Energies.

Average retail electricity price in 2011: commerial/industrial segment, EUR/MWh



Source: Wirtschaft & Infastruktur GmbH & Co Planugs - Renewable Energies.

Germany's goal: raise the contribution of renewable energy from 20% to 35% by 2020, and to 80% of total consumption by 2050. The total cost of financing this transition is estimated at 800 billion Euros by DIW Berlin. The first stage, from now until 2020, is supposed to cost 200 billion Euros. At a time when commitments to save Spain and the rest of the Periphery are

[5] Levelized costs are all-in costs which include construction, financing costs, ongoing maintenance and operations and fuel inputs costs. In Europe (unlike in the US), levelized cost numbers also include a carbon footprint estimate @ $30 per tonne of CO_2.

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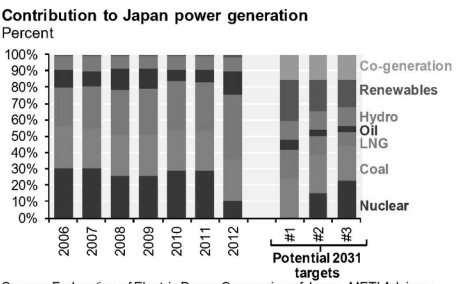
The most important energy developments of 2012: how countries are planning for Independence Day

adding up, it is unclear how Germany will accomplish all of its goals simultaneously. That's probably why the ECB has been doing the heavy lifting in the European bailout: that approach doesn't look like it will cost Germany any money (yet…..)

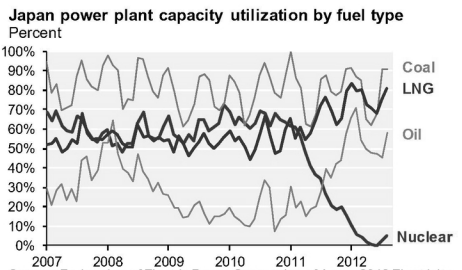
A brief comment on investment opportunities in wind. A recent offshore wind farm project in Germany entailed a fixed sale price contract for electricity at a guaranteed rate of 119 Euros per MWh for 13 years. This compares to 45-50 Euros per MWh for electricity in shorter term German power markets. The investor takes operational and maintenance risks, and the risk of wind's intermittency. With a large gap between the contract price and the spot market, there may be a "windfall" (sorry) for investors. **However, wind investment risks have at times been under-appreciated**. In a May 2012 report from Standard & Poor's, the authors note that they had initially rated 7 portfolio and single-asset wind projects as investment-grade. All but one has since fallen below investment-grade, which S&P states is a result of "wind resource deficiency" (wind levels below what industry experts had cited as lower-bound estimates), and higher-than-expected operating and maintenance costs (repairing cracked foundations, jack-up rigs to fix gearboxes and blades, etc). On the latter point, S&P indicates that U.S. wind project O&M costs stabilized at rates that were 30% to 40% higher than forecast.

III: Inherit the Wind: Japan's energy dilemma after Fukushima

Among the challenges Japan has faced in the wake of the tsunami and nuclear meltdown, one of the greatest relates to energy policy. Only 2 of its 54 nuclear reactors are now operating. While Japan may turn some back on temporarily, it expects to decommission all of them within 18 years. Like Germany, Japan plans to increase contributions from renewable energy. Japan's plan entails increases in offshore wind, geothermal power, biomass and tidal power. The government's preferred plan as described by the METI Advisory Committee in September 2012 is #1 in the first chart, which entails no nuclear power by 2031.



Source: Federation of Electric Power Companies of Japan, METI Advisory Committee.



Source: Federation of Electric Power Companies of Japan 2012 Electricity Review, J.P. Morgan Commodities Research.

The first thing to note is that Japan has been able to withstand the reduction in operating nuclear plants through a sharp increase in electricity produced by natural gas plants, and oil-burning plants. However, as shown above in the 2nd chart, utilization rates of plants using LNG are rising close to maximum capacity. Consider as well the fact that Japan pays as much as 5 times more per BTU for its natural gas than the US. As a result, Japan is facing a near-term decision: turn on more nuclear power plants, import more LNG or suffer the growth penalty from higher electricity costs resulting from less supply. For a country that is already suffering from low growth and declining exports, this would be a steep price to pay.

As for Japan's long-term renewable energy plan, it is starting from a lower base than Germany: in 2011 only 1.25% of electricity came from renewable energy other than hydro (which supplied ~9%). The largest single component of its renewable energy plan relies on offshore wind. Japan's Institute of Energy Economics estimates that offshore wind levelized costs might be only 35% higher than onshore, but Japan has limited experience in both. What may be more relevant is the experience of the United Kingdom. In a recent auction run by Ofgem (Britain's electricity and gas market regulator), participants were asked to bid on a contract to build connections to offshore wind farms. Using Ofgem's estimated transfer values, **just the cost of building the connection** for offshore wind farms to the grid is ~$1.05 million per megawatt (MW). As in Germany, this is a bit higher than the UK Department of Energy and Climate estimate for an *entire* new 850-MW combined cycle natural gas plant.

For manufacturing-heavy Germany and Japan, a future based heavily on offshore wind and solar will be a brave new world of yet-to-be-determined cost and complexity. According to Vaclav, **the "entire green thing is desirable and very much worth doing, but at a measured realistic pace commensurate with overall system conditions and requirements, not guided and propelled by naive, unrealistic expectations and impossible goals"**.

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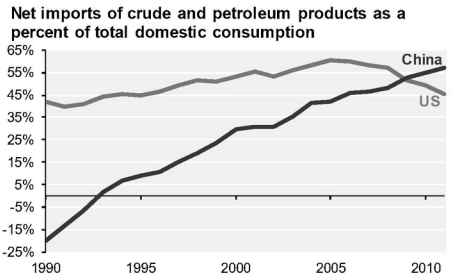
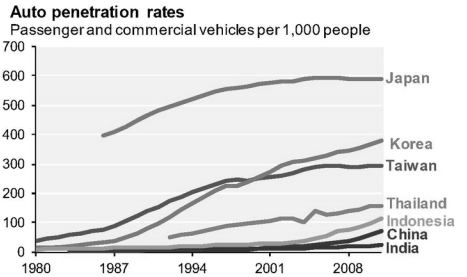
The most important energy developments of 2012: how countries are planning for Independence Day

IV: What geopolitical consequences may result from China's rising energy needs?

As shown below, US reliance on oil imports as a share of consumption is gradually declining. China's percentage, on the other hand, is rising and now higher than in the US (in dollar terms, US imports are higher but they should converge in a few years). China now has the world's largest new car market and most extensive network of superhighways. It is making substantial investments in a renewable energy, and is now the largest solar, wind, nuclear and hydropower market. However, given the current lack of a viable, affordable electric car, Chinese fossil fuel consumption is expected to continue to rise. The penetration rate of passenger vehicles in China is considerably lower than in other countries. China's per capita GDP is lower as well, so the gap will not close overnight. The second chart below gives a good indication of the potential rise in automobile use in China over time. These trends are part of the reason why we do not expect reduced US imports to result in lower oil prices.



Source: Energy Information Administration, BP.



Source: China Association of Automobile Manufacturers, CEIC, J.P. Morgan Securities LLC.

Vaclav sees these trends as important, since they affect prospects of China co-operating with the West on containment of Iran's nuclear ambitions. Unfortunately for the West, the prospects for co-operation on sanctions appear dim. Some things to keep in mind about China's relationship with Iran, described in greater detail in a 2012 Rand Institute report:

- Iran and China share a deep ambivalence about the West given their prior experiences as semi-colonial states in the beginning of the 20th century. The US supported a coup against a popular Iranian leader in 1953 (and also influenced other political transitions), and Communist China was under U.S.-led international sanctions for most of its existence.
- China extended recognition to Iran's Islamic Republic only 3 days after its founding, and improved relations with Iran through arms sales during the Iran-Iraq war (small arms, ballistic and anti-cruise ship missiles)
- China became a net oil importer in 1993, and further strengthened ties with Iran. Once China was accepted into the World Trade Organization in 2001, the West lost the little leverage it had over Sino-Iranian ties.
- From 1985 to 1996, China provided Iran with civil nuclear technology and machinery, assistance in uranium exploration and mining, training for nuclear engineers, and instruction on the use of lasers for uranium enrichment. China ended its direct support for these nuclear programs in 1997. Chinese design and technology are seen in Iranian ballistic and anti-cruise ship missiles, anti-ship mines and fast attack boats.
- For the last two decades, China has built railroads, bridges, dams, ports and tunnels throughout Iran. In 2007, China became Iran's largest trading partner, and the two countries announced plans to broaden bilateral trade to $100 bn per year by 2016.
- The two countries formed a joint oil and gas committee to broaden energy cooperation. China is the most important investor in Iranian exploration and extraction operations, and has been selected to develop the Azadegan and Yadavaran oil and natural gas fields, and the South Pars field. Iran is the largest methanol exporter to China, displacing Saudi Arabia.
- Iran used to be vulnerable to refined fuel sanctions when it imported 40% of them; China helped Iran build out its refining capacity, and Iran is now a refined fuels exporter.
- China is paying Iran in rice and medical/engineering supplies (and cash) in exchange for Iranian oil, and a Chinese shipyard delivered the first of 12 supertankers to Iran, giving it extra capacity to transport its oil to Asia.
- A couple of quotes on the geopolitics of all of this, from the Peking University School of International Studies and Renmin University: "*It is beneficial for our external environment to have the United States militarily and diplomatically deeply sunk in the Mideast to the extent that it can hardly extricate itself*", and "*Washington's deeper involvement in the Middle East is favorable to Beijing, reducing Washington's ability to place focused attention and pressure on China.*" [Rand report]

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Bottom line: China has a long history of economic, political and military co-operation with Iran. China has greater economic linkages with the US, but for China, that fact does not negate the advantages of its relationship with Iran, particularly as its energy needs continue to rise, and as it seeks to prevent U.S. domination of the Persian Gulf.

V: Another rough year for the electric car

Forecasts of greater electric car penetration have been around since the 1970's. A report by The National Regulatory Research Institute in 1980 aggregated various studies, which predicted 1.2 mm units in use in the US by 1983, 3 mm by 1990, 5 mm by 1995, 6.2 mm by 1998 and 13 mm by 2000. Instead, only 2.5 mm have been sold since 1999, and this mostly includes hybrids, which are not true plug-in electric vehicles (most use regenerative braking for short distance trips). Since 2010, only 50,000 highway-capable plug-in electric vehicles have been sold in the US, less than 0.03% of all vehicles. For decades, scientists have projected battery breakthroughs using nickel-zinc, iron-air, nickel-air, as well as combinations of zinc with chlorine or air and sulfur with sodium or lithium. Progress has been slow. Affordable mass-produced electric cars are still on the drawing board.

- Toyota cancelled plans for sales of eQ vehicles, claiming that the current capabilities of electric vehicles do not meet society's needs. Toyota planned to sell 40,000 plug-in hybrids in Japan this year; only 8,400 have been sold so far
- After receiving a $529mm loan from the US government, Fisker developed and built the Karma in Finland. Its battery failed during the Consumer Reports test drive, and Fisker subsequently recalled all of its 2012 Karma batteries
- A123 Systems, Inc., maker of the recalled lithium-ion battery used in the Karma and recipient of a $249mm Federal grant in 2009, filed for bankruptcy protection on October 16, 2012
- Tesla cut their delivery targets for 2012 from 5,000 to 2,700-3,250 due to production issues
- The Chevy Volt is the most successful electric car in the US, but only 16,400 have been sold this year through September, vs the goal of 45,000 that was set by the Department of Energy. Sales of the Nissan Leaf in the US are down 28% vs 2011.

If you have gotten this far, I hope you enjoyed our annual energy issue. See you next year, when it will be the 40th anniversary of *Soylent Green*, in which Edward G Robinson rides a bicycle to power a lamp so he can read a book.

Michael Cembalest
J.P. Morgan Asset Management

Biography

Vaclav Smil is a Distinguished Professor Emeritus in the Faculty of Environment at the University of Manitoba in Winnipeg and a Fellow of the Royal Society of Canada. His interdisciplinary research includes the studies of energy systems (resources, conversions, and impacts), environmental change (particularly global biogeochemical cycles), and the history of technical advances and interactions among energy, environment, food, economy, and population. He is the author of more than thirty books and more than three hundred papers on these subjects and has lectured widely in North America, Europe, and Asia. In 2010 he was noted by Foreign Policy magazine as #49 on its list of the 100 most influential thinkers in the world.

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Global Utility White Paper

A Primer on Long/Short Investing in the Global Utilities & Infrastructure Sector

Jos Shaver
Portfolio Manager
Electron Capital Partners LLC

March 08, 2013

For exclusive of Jeffrey Epstein

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1. Executive Summary

This White Paper discusses Electron Capital's ("Electron") views on the global utility sector and outlines why now is a particularly advantageous time for long/short investing in the sector using Electron's research approach that focuses on structural change.

Electron's 5 investment professionals, working together an average of 6 years, have generated a 7-year track record of long/short investing in the global utility sector. Returns have annualized 10.3% and have been characterized by strong alpha generation (80% of returns; Jensen's alpha calculation) in a dismally-performing global sector (-0.2% absolute).

Electron will continue its approach with the **Electron Global Fund, an absolute return product**. (See Appendices 1 and 2 for Electron's process and the sector's history.)

Electron invests in a deep universe of utility and infrastructure stocks, comprising 375 companies with a market cap of $2.8 trillion. Our approach is truly global as 40-60% of the portfolio's historical gross has been allocated outside the US. Stocks covered include the electric, gas, water and waste utilities in addition to infrastructure companies (defined as those levered to utilities or utility-like). For the sake of simplicity, the rest of this White Paper will focus on the electric utilities, the largest subsector; we refer to this subsector when we reference "utility".

- **Advantageous time to be long/short investing in the global utility sector (Section 2)**.
  - Structural change in the sector has been accelerating after a recession-induced slowdown.
  - Long-only investors are not positioned for such structural change in what is the world's most underweight sector.
  - We believe hedge fund investors have already begun to make this turn as evidenced by a significant increase in net exposure over the last 6 months.

- **Structural changes will drive the largest alpha opportunities in all major regions (Section 3).**
  - US utilities will face the strongest headwinds, yet structural change will occur which will drive alpha opportunities. We believe the most interesting US structural changes will have a magnified effect internationally given commodity interlinkages.
  - European and Asian utilities offer the most abundant and attractive alpha opportunities.
  - Japan and Latam will be more trading markets over the near term.

- **Some structural changes will have a global impact (Section 4)**.
  - The shale gas and coal price washout (with its knock-on effect on global power prices) is largely over; the global utility sector has substantial optionality to any increase in power prices due to natural gas and coal prices, which will be heavily influenced by trends in the US.
    - On the supply side, US spot gas at $3.42/mmbtu is below the breakeven full-cycle natural gas production cost of $3.50-4.00/mmbtu. We believe this provides downside protection to the current gas price despite the proliferation of shale gas.
    - Potential additional demand for natural gas is enormous:
      - In the US power sector (37% of demand), EPA mandates will force coal plant closures (e.g. potentially adding 10% to natural gas demand) and increase the marginal switching cost for the most efficient plants to $4/mmbtu, providing a runway for structurally higher gas demand/prices.
      - Other large potential structural sources of demand arise from LNG exports (also 10% of US demand), a gas-intensive industrial renaissance (also 10%), and substitution of LNG/CNG for oil-based vehicle fuels.

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        - Leverage to higher power prices can be substantial. For example, in the US every $1/mmbtu improvement in natural gas prices increases Exelon's long-term earnings by more than 20%, whereas for pure generators such as NRG the leverage exceeds 30%.
        - In Europe, where power is generated at close to cash production cost in many markets, even a modest (e.g. 10%) combination of changes in coal, carbon and Euro prices can have a 25-50% earnings impact on several European utilities.
    - Global utility capex (ex-US) is rebounding after a recession-driven slowdown:
        - System-enhancing transmission capex is accelerating in Europe and Asia and is firm in the US.
        - US, European and Asian utilities are building much of the infrastructure needed to capitalize on the global shale gas boom underway.
        - In emerging markets, infrastructure spending is occurring across the entire value chain.

- **Substantial alpha opportunities follow periods of underperformance (Section 5)**.
    - Current MSCI World Utility Index underperformance against the MSCI World Index is the deepest (-67%) and longest (4 years) of the modern utility era, caused by a perfect storm of factors (see page 15).
    - Despite the strong rally in equity markets since the depths of the financial crisis, the global utility sector is still down -11% in absolute terms and has underperformed the second-worst sector (telecom) over the same period by -23%. Previous periods of underperformance have set the stage for substantial alpha opportunities driven by fundamental investors re-entering the sector.
    - The global utility sector does not need to outperform for Electron to generate solid performance; 80% of our 7-year return (10.3% per annum) is from alpha (Jensen's alpha calculation).

- **Investing in the global utility sector does not mean taking undue interest rate risk (Section 6)**.
    - The interest rate sensitivity of the sector has declined steadily since the modern utility era began in the early 1990s. US utilities remain the most interest rate-sensitive companies regionally.
    - We track interest rate risk for all positions in our risk model, and the portfolio's net interest rate risk is kept within acceptable limits as we select stocks. In addition, **Electron's return correlation to interest rates historically is slightly lower than the HFRI Equity Hedge Index's return correlation to interest rates.**
    - This process has worked well for us as Electron has posted strong returns and alpha generation in both increasing and declining interest rate environments.

- **Investors should always have an allocation to the global utility sector.**
    - This is a large-cap, dividend-generating sector that is vitally important to national economies, and which is subject to undercurrents of deregulation and competition. This has produced ample long/short opportunities in the past and will continue to do so for the foreseeable future.
    - Moreover, **an allocation to global utilities provides a diversification benefit to investor portfolios**. The risks affecting a global utility sector fund are very different from those affecting other long/short funds and diversification enables higher returns per unit of risk. Electron's 7-year track record correlation to the S&P 500 and HFRI Equity Hedge indices is .41 and .68, respectively (.18 and .55, respectively, in down markets).

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2. Structural Change – Advantageous Time for Global Utility Sector Long/Short Investing

The high level of structural change occurring around the globe makes this a particularly advantageous time to be long/short investing in the global utility sector. The various examples for each region, the importance of structural change to each region and the opportunities are listed in Section 3.

- Structural Change in Electron's Research Process

  Since the original Electron was formed in 2004, Electron's research process has focused on structural change to determine its impact on the underlying future earnings potential of our companies (see Appendix 1, page 22). Whenever there is structural change, distortions and inefficiencies arise. These invariably result in **both winners and losers among utility stocks**, in large part because of the heavy influence of public policy on the sector (e.g. governments and regulators). Policymakers will never want to knowingly provide windfall profits to utilities; if a structural change is producing a winner, we look for the loser. If a loser cannot be found, we keep looking: the loser will eventually surface.

- Structural Change Cycle

  As cycles are an important feature of life, so are cycles of structural change important in the global industry. During the recession **following the financial crisis, the activity level of structural change did slow down around the globe**. This is not surprising as governments, regulators and other stakeholders slowed the pace of structural change (i.e. a hunkering down mentality took hold among utility stakeholders) and companies slowed their rate of capital spending (because of uncertain economic growth prospects). As time has passed, the outlook for global growth has stabilized, tail risks have been managed and confidence has returned, and companies have begun spending previously-delayed capex needed to ensure system reliability. This collectively has prompted utility stakeholders to pick up the pace of structural change. Given that we track structural change globally, we estimate that this **inflection point of increased structural change occurred approximately 12-18 months ago**.

- Investors Not Positioned for Structural Change Pickup

  That we are at an inflection point for a **pickup in structural change is underappreciated** by the market. Moreover, it is occurring at a time when there are fewer eyes focused on global utilities. The underappreciated pickup in structural change activity levels combined with low investor involvement **spells opportunity for the Electron Global Fund** as it plays to the Electron team's competitive advantage. This driver was critical to the investment professionals' decision to re-launch the independent Electron.

  - Long-Only Investors Substantially Underweight but Hedge Funds Turning

    The global utility sector is the **world's most-underweight sector by a large margin**. Moreover, the underweighting has dipped to a comparably extreme level only 4 times (including now) over the last 10 years. Each time this extreme has been crossed, over the next 24 months global utilities rose by 38% on an absolute basis and outperformed the global broad market by 20%, on average.

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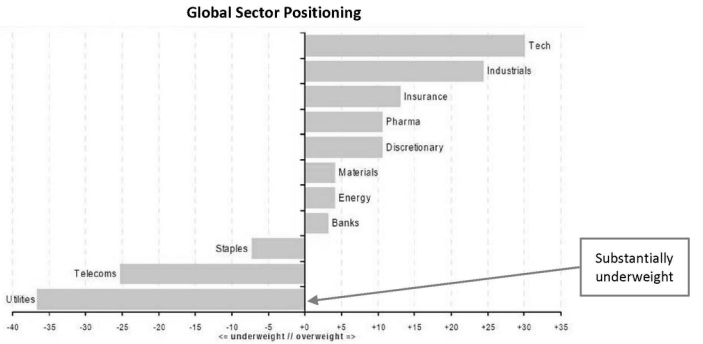
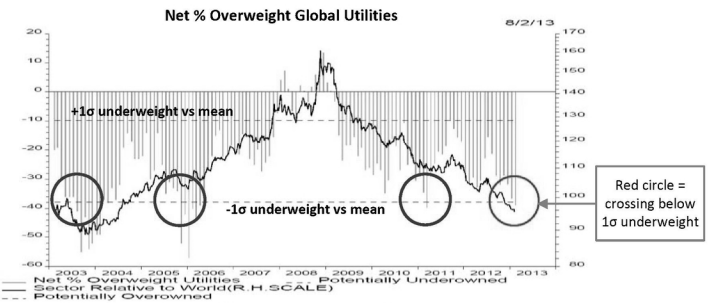


Source: Bank of America Merrill Lynch Global Fund Manager Survey, Feb 12, 2013



Source: Bank of America Merrill Lynch Global Fund Manager Survey, Feb 12, 2013

The sector has been not only a substantial long-only underweight, but also a wholesale short for many macro/generalist hedge funds. However, it is very interesting to note that an inflection point appears to have occurred in the middle of 2012, with **hedge funds increasing their net exposure to the global utility sector** after a long period of reducing net. The long/short ratio of utility stocks held by hedge funds fell from 3.0x in Jan 08 to about 1.7x in Jan 12 (4 years), but has since risen by 60% to 2.7x, which is more than twice the increase for hedge funds' overall net exposure during the same period (source: Goldman Sachs).

Based on discussions with the Street, it appears that this short exposure has been expressed via ETFs, regional utility indices or large bellwether index utility proxies. Individual name crowdedness has continued to remain at a low level (e.g., utilities rarely show up Goldman Sachs Hedge Fund VIP list – ticker GSTHHVIP). Today, **utilities account for the lowest in gross assets held of the 10 global sectors**. (Source: Goldman Sachs Hedge Fund Trend Monitor analysis of 700 hedge funds with $1.3 trillion in gross assets.)

In addition, global QE programs have boosted demand for higher-beta stocks, which has contributed to the recent relative underperformance of and lack of interest in utilities. However (see below), the underperformance of US utilities has diminished with each successive QE round (QE1

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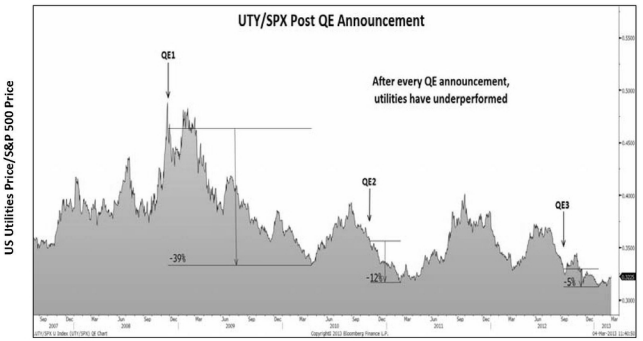
underperformance -39%, QE2 -12%, QE3 -5%), which signals exhaustion of selling pressure as the relative value of the S&P versus utilities has stretched further. Given widespread use of QE, a similar effect can be found in other regions.



Source: Bloomberg

3. Regional Structural Changes Driving Alpha Opportunity

Structural changes are occurring in all regions. Those in which Electron is currently investing or tracking closely are as follows:

- US Utilities

  Of the global utility markets, **we expect the US utilities market to face the strongest headwinds** and be the least-attractive market for alpha generation over the next 2 years. Since the financial crisis, **the US has been the best-performing region** for utilities of all the developed markets, outperforming European utilities by 40% over the last 4 years, and it is the region which is only slightly underweight by investors.

  The US is the most defensive of all regions because of the large weighting of regulated names. Since 2008, US utility earnings have been flat (versus a -45% decline in Europe), as consistent regulated earnings growth of 3-5% offset unregulated utility earnings declines resulting from lower power prices driven by falling natural gas prices. Notwithstanding flat earnings growth, **investors have re-rated the US utility sector's PE multiple** relative to the S&P as they sought more yield in a low-yielding QE environment. Today, US utilities are close to the sector's pre-crisis record valuation peak (trading at a 7% PE premium to the S&P 500) when investors were discounting higher earnings growth from tightening power markets (see below).

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Source: Bloomberg

While we will continue to see solid growth from the regulated names, and a total return argument can still be made that justifies the current premium valuation of US utilities, we do see capex growth starting to level off. This is the opposite of what will happen in Europe and Asia, where we expect regulatory capex to increase. Moreover, we believe **US utility regulators will continue to pressure returns on equity (ROEs)** as interest rates remain low. We believe there is greater opportunity among companies with non-regulated power generation assets, as we expect firm natural gas and thus power prices to flow through to earnings. Note, for example, that every $1/mmbtu improvement in natural gas prices would increase Exelon's long-term earnings by more than 20%, whereas for pure generators such as NRG the leverage exceeds 30%.

Below is a partial list of structural changes driving long/short opportunities in the US:

Electron's structural changes: US

- **Coal retirements' impact on power markets**
- **Change in competitive generation market structure as a result of the shale gas boom**
- **Transmission spending to integrate renewables/improve reliability, and its impact on power prices**
- **Obama initiatives on climate change legislation, and the EPA threat**
- **Energy efficiency initiatives – utility uncoupling , demand growth**
- **Nuclear assets facing closure – impact on power markets**
- **Renewables' power markets distortions (impact on peak and off-peak power prices)**
- **Increased infrastructure spending to move shale gas from basins**
- **LNG export impact on gas and power markets**
- **Regulatory ROE changes with low rates, higher capex, declining load growth, commodity price changes**
- **Increased generator retail selling versus wholesale**
- **Capacity market in TX, CA**
- **State generation subsidy impacts on capacity markets**
- **M&A and asset divestitures' impact on power markets and utility risk profiles**
- **Oil-to-gas residential switching**
- **Electric vehicle demand impact**
- **Regional load growth changes – manufacturing renaissance, state taxes, etc.**

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- European Utilities

We believe European utilities have the potential not only for the strongest outperformance but also for the greatest alpha generation. Since the financial crisis, European utility earnings have declined approximately -45% which is slightly less than European broader market earnings declines of -51% (Stoxx 600 or SXXP) and -58% (Stoxx 50 or SX5E). Prior to the crisis, European utilities used to trade at a 20% premium to the broader market. During the recovery, European utilities suffered a -43% derating and now trade at a 31% PE discount to the broader market. Most of this derating is explained by the European utilities' lack of participation in the European broad market PE multiple re-rating (SX5E +115%, SXXP +76%) since the recovery beginning in 2009. Moreover, approximately 40% of the sector is now trading below book value.

Clearly, investors appear to believe that earnings have troughed for European companies broadly, but not for European utilities. Concerns about political intervention along with low power and carbon prices have prevented a re-rating of the sector. However, we are comfortable that we are **close to a bottom**, and that optionality is asymmetrically skewed to the upside for the European utilities, as **many generation assets are producing power at close to cash cost**.

Relative to US utilities, European utilities have underperformed by -40% and the relative PE has de-rated by -11% since the crisis. The average European utility's relative dividend yield is now 95% higher than that of US peers before the crisis. Although some would argue that dividend cuts are coming (we agree broadly, and see several interesting short opportunities), we do not see the entire sector's dividends being cut by 50%, as stock prices imply. As such, the sector today has dividend support even though some dividend cuts will undoubtedly happen.

In addition to dividends, potentially higher power prices from both higher European coal and carbon prices could also provide support. At present, the carbon market (EU ETS) in Europe is dysfunctional, with carbon trading at €5/tonne, well below the cost required to spur investment in low-carbon generating capacity. We expect the carbon market to be restructured (already being discussed), thus raising the price of carbon and increasing power prices. Moreover, with China's GDP growth reaccelerating and 70% of the resulting rise in electricity production generated from coal, we would anticipate a modest growth in coal consumption in the Asian seaborne market, thereby supporting South African and European coal prices. Given our view of rising US natural gas prices, we expect coal exports from the US to Europe to fall. These are all factors that should support European coal prices even before accounting for greater demand for coal that might come from Europe should growth return. Notwithstanding, short opportunities will remain in several European markets due to the influence of renewables.

Moreover, if the European Central Bank were to lower its Main Refinancing Operations rate, currently 75 bps, and provide other monetary policy support, we would expect not only increased demand for electricity (which would increase coal consumption) but also a weaker Euro would increase the Euro price of coal (in Europe) and thus power prices. There are a number of factors at work here, and it is difficult to predict levels with any degree of accuracy, but even **small changes would have a significant impact** on the sector. For example, a combination of a +10% increase in coal prices, -10% decrease in the Euro/$ exchange rate, and a rise in the carbon credit price from €5 to €10/tonne would produce 25-50% earnings upside in many continental European utilities.

Below is a partial list of structural changes driving long/short opportunities in Europe:

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Electron's structural changes: Europe

- **EU energy efficiency directive and load growth**
- **EU ETS (carbon market) changes**
- **Renewables build and power market distortions**
- **Mismatches between tariff rises and costs/capex**
- **Infrastructure spending impact on energy costs and power/gas competition**
- **UK capacity markets**
- **Large combustion plant directive (LCPD) (UK)**
- **Power market impact of nuclear phase outs (Germany) and new nuclear build (UK)**
- **Political interference on the continent (taxes, return formulas, tariffs)**
- **M&A, divestitures, privatizations' impact on power markets and changing utilities' risk profiles**
- **Bifurcation of sector valuation because of WACC changes**
- **European gas price delinkage from oil**
- **Ongoing renegotiation of Gazprom contracts**
- **European utility non-regulated investments moving offshore**
- **Erosion of the Italian power price premium**
- **New Italian water regulations**
- **Shale gas potential in Europe**
- **Implementation of Russian RAB-based regulation**
- **Electric vehicles**

- Asian Utilities

The Asian utility sector is a tale of two worlds. One enjoys a stable regulatory environment and solid power purchase agreements, as in Hong Kong and Thailand; the other is a victim of government intervention, as in Korea and China. The two worlds can coexist in the same country, for example in Malaysia where independent power producers enjoy solid power purchase agreements while utility Tenaga, which is a large employer and which faces the consumer directly, suffers from political meddling. Capex cycles and potential regulatory changes, respectively, tend to dominate performance of the two sides. For example, Korea Electric Power has outperformed sharply at times in the past on even small steps toward fuel cost passthrough implementation. In India's chaotic power markets, outperformance could arise from even small steps toward implementation of urgently-needed reform, e.g. any movement to improve access to fuel supply (notably coal) for independent power producers. The dichotomy between the two "worlds" of the Asian utility sector provides ample opportunities to generate alpha.

The vast population and developing nature of the region, and consequent issues of energy security and environmental sustainability, create **additional forces for structural change**. For example, as China increasingly promotes natural gas usage, we will see gradual pricing reform, more natural gas imports, greater natural gas vehicle adoption and accelerating shale gas development.

Below is a partial list of structural changes driving long/short opportunities in Asia-Pacific (ex-Japan):

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Electron's structural changes: Asia-Pacific ex-Japan

- **China power market policy changes to address record pollution levels**
- **Impact on China's power market of selective coal plant approvals**
- **Accelerating development of shale gas in China**
- **Urgently-needed power reform in India to address fuel, power tariff and grid issues**
- **Potential carbon trading and Renewable Portfolio Standards (RPS) in China**
- **Increasing promotion of natural gas usage and price reform in China**
- **Fuel cost passthrough implementation amid a potential power shortage in Korea**
- **Continued support for nuclear power by China – new-build approval delay impact**
- **Increased robustness of fuel cost passthrough regimes**
- **Indian import duties on equipment**
- **Increasing pressure on electricity tariffs in HK**
- **Rising Australian domestic gas prices on LNG export arbitrage**
- **Australian carbon market future**
- **Consolidation of the Australian supply market into an oligopoly**
- **Australian state regulatory evolution (e.g., electricity in Queensland)**

- Japanese Utilities

The **impact of the Fukushima incident on Japanese utilities** will last for years. Nuclear policy will continue to be reviewed – notably the decision whether to restart nuclear power plants – which will affect the utilities' long-term fuel mix and therefore cost base.

For example, Kansai Electric Power, which has the largest exposure to nuclear generation after Tokyo Electric, stopped paying dividends after the nuclear shutdown. Every 1% change in its nuclear fleet utilization rate will affect earning by almost 10% over a normalized level; nuclear policy decisions can thus create outcomes for share prices of +/- 50%.

The ripples from changing nuclear policy will have a long-lasting impact, both negative and positive, on companies involved in the nuclear value chain (e.g., reactor manufacturers such as Mitsubishi Heavy) and other power-related sectors such as gas and renewable energy. Relative to other regions, Japanese utilities will be the most affected by macro factors (e.g. the Yen, interest rates, fossil fuel prices, etc.).

Below is a partial list of structural changes driving long/short opportunities in Japan:

Electron's structural changes: Japan

- **Fukushima incident's impact on Japan's power-related sectors such as LNG and power equipment**
- **Derating of sector as a result of the government's response to Fukushima**
- **Restart of nuclear plants with Abe administration and prefecture support**
- **Fuel cost impact from Yen depreciation**
- **Movement to higher value-added renewable energy systems**

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- Latam Utilities

Latin America will be a **trading market** for the next year or two. These markets, with the exception of Chile, are subject to significant government intervention, which follows long cycles; Brazil is early in the interventionist cycle (e.g., Brazilian President Dilma Rousseff's recent politicization of electricity tariffs), while other countries such as Argentina are closer to the end.

Below is a partial list of structural changes driving long/short opportunities in Latin America:

Electron's structural changes: Latin America

- **Brazil's tariff intervention and consequent derating of sector**
- **Argentina's increasingly urgent need for system investment and tariff increases**
- **Shale gas development in Argentina and its impact on power prices and regional markets**

4. Global Structural Changes Driving Alpha Opportunity

In addition to region-specific structural changes, there are structural changes that have a global impact on the utility sector.

- Power Prices are Skewed to the Upside

The cost of **natural gas and coal sets the marginal power price in many power markets** around the globe. The rapid rise in US shale production that began in 2007 caused domestic gas prices to decline much more rapidly than other fuels and put downward pressure on power prices both in the US and globally. For US gas-fired generator Calpine, lower fuel costs offset lower power prices and the company emerged a relative winner. Virtually all other US generators employ a mix of assets fired by costlier fuels and suffered a tremendous margin squeeze, with – in the most extreme example – coal-fired generator Dynegy declaring bankruptcy in 2012. We believe the downward trend in US natural gas prices has flattened for reasons noted below, and upward optionality remains, which will affect power prices not only in the US but also Europe and Asia given cross-border commodity linkages.

In Europe, in an example of the regional, non-correlated character of the global utility sector, a quite **different dynamic** has taken shape, with coal-generated power margins remaining attractive relative to natural gas-fired generation margins. Coal prices in Europe have declined as a result of cheaper US and Colombian coal imports (because of US shale gas) and the knock-on effect of softening Asian coal prices. Carbon costs (i.e. EU ETS) embedded in power prices also have declined, from €16/tonne 2 years ago to €5/tonne today, largely as a result of the European recession. With European natural gas prices at 3x US prices (unlike in the US, natural gas prices in Europe are linked by convention to oil), European utilities have been minimizing natural gas generation and maximizing coal generation. So, unlike the situation in the US, coal generators such as Drax in the UK have enjoyed better margins on higher power output (see below) as gas plants sit underutilized.

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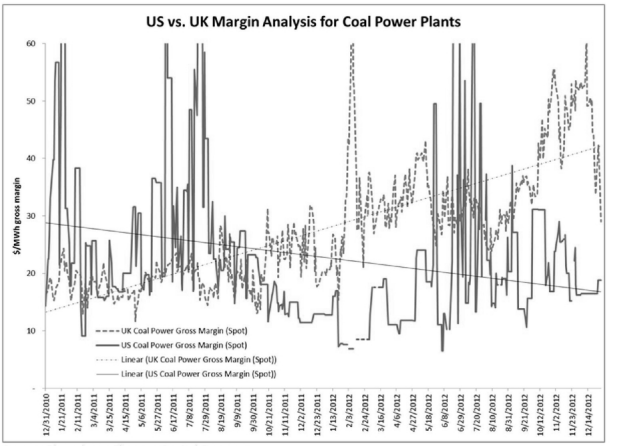

Source: Bloomberg, Electron Capital Partners

We believe a floor price exists for natural gas despite shale production. We fully acknowledge that the US has large reserves of shale gas awaiting development. However, the current spot price ($3.42/mmbtu) sits below the breakeven full-cycle cost of most US basins ($3.50-$4.00/mmbtu), which has led producers to focus on liquids-rich plays and de-emphasize dry-gas production. Accordingly, the gas rig count is at a decade low and the Energy Information Administration expects gas production to be flat through 2014. With the wide spread between oil and U.S. natural gas prices likely to continue, we expect the growth in liquids shale production to remain much higher than gas.

On the demand side, the power sector is the largest consumer (37%) of natural gas in the US. At prices below $5/mmbtu, coal switching begins, and at prices below $3/mmbtu, gas-fired power generating units become competitive against even the most efficient coal units. Importantly, the breakeven point for coal-to-gas switching will rise materially due to EPA mandates. By 2015, these standards move the breakeven point for the most efficient coal units from $3/mmbtu to approximately $4/mmbtu, close to where current forward prices sit.

Large potential structural changes in demand create upside optionality. There has been much media focus on the growth of shale gas production, so much so that we believe potential demand drivers are underappreciated. For example, currently-planned US coal plant retirements, if repowered with gas, would support an additional 6 billion cubic feet per day (bcf/d) of gas demand, adding nearly 10% to total US demand. In addition, we see the potential for LNG exports to exceed another 6 bcf/d (27 bcf/d of project capacity awaits US Department of Energy approval). Cheap gas is also spurring an industrial resurgence, with new petrochemical plants being proposed in the Gulf and traditional coal users such as steel mills contemplating refiring their facilities with gas instead of metallurgical coal. Longer term, LNG as a vehicle fuel substitute for long haul trucks and CNG for lighter vehicles could also add materially to gas demand. Given the number of possible structural demand changes and the enormous potential from each, we believe the optionality for natural gas prices is clearly to the upside.

We believe the recent trend of softer US natural gas prices leading to a deflationary impact on global utility sector earnings is, then, largely played out. Longer-term, we see many positive demand

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fundamentals that are supportive of higher natural gas prices; while we don't expect a return to the commodity boom times of 2003-2007, a turn in trend will be very supportive of higher share prices.

- Capex (ex-US) is Rebounding Post-Recession

Capital spending precedes earnings, and **utility capex (ex-US) is rebounding after a recession-driven slowdown**. In particular, transmission spending is accelerating in Europe (Germany, Spain, France) and Asia while remaining firm in the US. Transmission capex not only enhances system reliability but also system efficiency, by enabling the delivery of the most efficient generation to meet demand. Many transmission grids face bottlenecks because of the inclusion of intermittent renewable generation in areas with ample wind and solar resources but located far from customers. Companies such as Northeast Utilities (US), National Grid (UK) and Elia (Belgium/Germany) are prime beneficiaries of this transmission capital spending, along with equipment providers such as ABB (Switzerland).

In addition, **many global utilities will be viewed as back-door beneficiaries of the shale gas boom globally** given the substantial amount of capex required to build new or upgrade existing infra-structure. US utilities are building much of the infrastructure to export gas out of the shale basins (Dominion, NiSource) and are building LNG liquefaction facilities (Dominion, Sempra) that are at the front of the queue for US Department of Energy approval. Several European utilities, such as GDF Suez (Belgium/France) and Gas Natural (Spain), and Asian utilities such as Kunlun Energy and ENN Energy (China; note that China has 2x the shale gas reserves of the US) are exposed to LNG infrastructure spending.

Finally, because of emerging markets' growth rates and a higher intensity of energy use, **emerging market utilities** will benefit from infrastructure spending across the entire utility value chain.

5. Substantial Alpha Opportunities Follow Periods of Underperformance

The global utility sector has experienced record underperformance and often this precedes substantial alpha opportunities.

- Record Duration and Depth of Underperformance

We have analyzed the price performance of the global utility sector since 1995, when MSCI introduced its Global Sectors. Although the period includes only 18 years of data, this is the relevant time frame as it effectively covers the entire period of industry deregulation (see Appendix 2, page 25).

As can be seen below, the current period of global utility underperformance is the deepest (-67%) and longest (4 years) of the modern utility era. Even with the strong rally in equity markets since the financial crisis, the global utility sector is still down -11% on an absolute basis. It has not only been the worst-performing MSCI global sector but has also underperformed the second-worst global sector by -23%.

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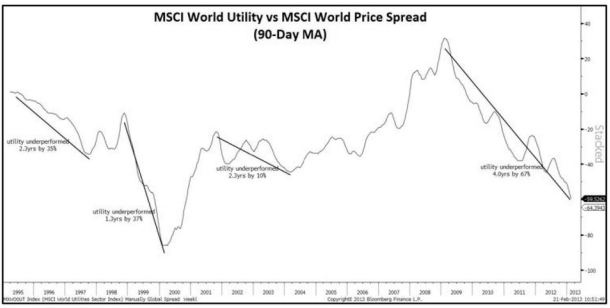

Source: Bloomberg

MSCI Global Sectors	Price 1/1/2009	Price 12/31/2012	Performance
Consumer Discretionary	68.5	132.4	93%
Information Technology	54.2	96.9	79%
Materials	146.1	237.2	62%
Industrial	101.4	155.8	54%
Consumer Staples	104.7	160.5	53%
Health Care	89.1	128.4	44%
Energy	181.9	238.9	31%
Financials	63.0	82.0	30%
Telecom	51.0	56.9	12%
Utilities	**113.4**	**100.9**	**-11%**

Source: Bloomberg

- Reasons for Underperformance

  Much of this recent underperformance can be explained by investors' textbook preference, coming out of recession, to add high-beta stocks and shed low-growth utilities. This was exacerbated by:
  - soft power demand growth (particularly in Europe);
  - generation overcapacity;
  - delays in capital spending;
  - lower commodity prices (particularly as a result of US shale gas production);
  - central banks' quantitative easing;
  - political interference (notably in Europe);
  - high debt loads;
  - the Fukushima nuclear disaster in Japan; and
  - concerns about interest rate rises from today's very low levels.

  It is hard to imagine a more perfect storm for the global utility sector than that which has played out over the past 4 years.

- Potential Exists for Sharp Outperformance

  Globally or regionally, **it is not unusual to find long and/or sharp periods of utility underperformance** (as with the current record period). During such periods, when combined with wholesale shorts and market underweighting, the sector becomes **poised for extended outperformance rallies**. This results from fundamental investors (both long/short and long-only) rotating into the sector en masse, bidding up the best value and growth utilities and underweighting or shorting utilities with poor business

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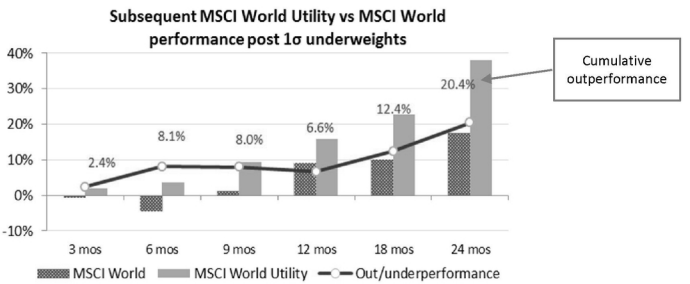
models/prospects. This can be triggered by improving sector fundamentals, better data points, or conversely by events that instead lower investors' perception of economic growth prospects (e.g., policy errors, rising European sovereign yields, higher commodity prices, etc.).

As noted above (page 5), each time the sector's underweighting reaches 1 standard deviation below the mean, over the next 24 months global utilities rise by 38% on an absolute basis and outperform the global broad market by 20%, on average (see graph below).



Source: Bank of America Merrill Lynch, Bloomberg

When these outperformance rallies occur, the potential **massive alpha opportunity** can be substantially greater than the return from a fund's net position.

As examples, we highlight the lessons from the dotcom period (second only to today's record underperformance) and lessons from Japan (given the deleveraging environment of today).

- Post-Dotcom Rallies

  The last time we saw underperformance anywhere close to today's magnitude was during the 3-year run-up to the dotcom bust (see graph below) as investors grabbed for growth in the "new economy". During the run-up (Jan 97-Jan 00), tech and telecom were the best-performing sectors, +322% and +162%, respectively. The global utilities sector was the second-worst-performing global sector, +12% and in line with the +9% worst-performing materials sector.

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Source: Bloomberg

Of course, not all investors sold utilities – some were astute buyers. Warren Buffett (at the time, thought to be a bit out of touch with the new economy) acquired $12 billion worth of utility assets between 1999 and 2002, namely MidAmerican ($9 billion), Kern River Gas Transmission ($960 million) and Northern Natural Gas ($1.9 billion).

Following the dotcom bust (Mar 00-Sep 01), global utilities staged a sharp catch-up rally over a 1.5-year period, generating +33% outperformance (-5% absolute). During this period, US utilities (which previously were the worst-performing region for utilities during the run-up) outperformed +68% (+37% absolute). But the **averages conceal some outsized moves in utility stocks** as investors returned to the sector en masse. Early investors realized enormous absolute returns on low-beta US utility stocks (e.g. SO +114%, ETR +114%, FE +99%, AEP +91%, PEG +78%) while the S&P sank -31%. Still, investors were discriminating as several stocks (e.g., CVA -45%, AES -34%, EIX -19%, PCG -16%, NU -3%) suffered absolute declines.

In Europe, the UK water utility stocks (among the lowest-beta/volatility stocks in the global sector) were wholly ignored during the dotcom rally despite their improving fundamentals. Following the dotcom bust (Mar 00-Sep 01) they also staged a fierce outperformance rally, and early fundamental investors realized very attractive absolute returns (e.g. Pennon +80%, Severn Trent +52% and United Utilities +21%), and enormous outperformance of the broader market (FTSE 100 Index -33%). This is all the more impressive when you consider that these water utility stocks have betas of approximately .43, less than half that of the broad market.

Again, fundamental investors were discerning as several European utilities experienced absolute declined during this same period (e.g., EDP -31%, Enel -30%, Endesa -20%, Centrica -19%).

- Japan Rallies

Japan offers insights into potential utility outperformance during periods of private sector deleveraging similar to what developed markets have experienced since the financial crisis.

Richard Koo, Chief Economist of the Nomura Research Institute, cites two major policy errors that extended Japan's long balance sheet recession: increased taxes in 1997 and expenditure cuts in 2001. Both policy errors were preceded by a long or sharp period of utility underperformance relative to

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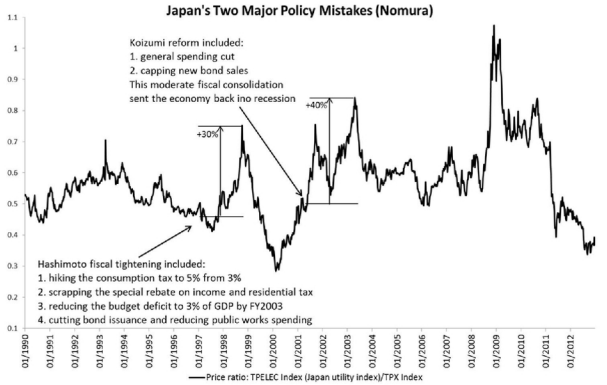
the broader market. Following the policy errors, Japanese utilities staged exceptionally strong outperformance rallies lasting over 1.5 years, on average, and outperforming the Topix by 30-40% (graph below).



Source: Nomura Research Institute, Bloomberg

During the Jan 97–Nov 98 policy error period, fundamental investors bid up the better prospects (Tokyo Electric Power and Osaka Gas each rose 34%) while the Topix declined by -19. During this same period, some Japanese utilities also posted sharp absolute declines, such as Hokkaido Gas -49%, Saibu Gas -30% and Okinawa Electric -27%. During the May 01-May 03 policy error period, Okinawa Electric and Hokkaido Gas rallied +40% and +23%, respectively, while the Topix declined -44% and Tokyo Electric Power and Osaka Gas declined -13% and -7%, respectively.

The Japanese utility experience is very interesting as several **economists question whether the US is currently committing similar policy errors** while deleveraging is still occurring in the private sector (e.g. the US just increased income and payroll taxes and is implementing austerity measures). The Japanese experience demonstrates the potential for strong outperformance rallies during periods of deleveraging, demonstrating the alpha opportunity arising from an influx of fundamental investors into the sector after periods of limited interest.

- Potential for Yield Catch-up

Unlike other income-oriented investments such as Treasuries, German bunds, UK gilts, investment-grade bonds, high-yield bonds, emerging market bonds and MLPs, all of which have rallied strongly – some believe as the result of a yield bubble – **the global utility sector has been left behind**; yet certain parts offer a compelling investment yield opportunity today. If some fixed income cross-over investors become more concerned about inflation (because of economic growth), yet continue to be squeezed by the QE programs of the Fed, BOE, BOJ, etc., then they could begin shifting into global utilities. This seems logical, as such **investors would look for the closest bond proxies** in the equity market, the utility sector, rather than bypass utilities for high-beta broad market stocks. **Given the enormous amounts of capital controlled by fixed income cross-over investors, even a small reweighting could have a significant effect in bidding utility stock prices up and yields down**.

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6. Interest Rate Risk – A Common Misperception

We find a common misperception among investors to be the degree of interest rate risk in the global utility sector, as **interest rate sensitivity has declined steadily** since the modern utility industry came into being in the early 1990s.

There is a relatively higher degree of interest rate risk in the defensive, fully-regulated utilities given their bond-like returns and the capital-intensive nature of the industry, which demands heavy use of debt financing. Such defensive fully-regulated utilities can be found in all regions, however the **highest concentration is found in the US**. European, Asian and Latam utilities are more levered to economic growth and therefore tend to be no more interest rate-sensitive than broad market equities.

Even the performance of the more interest rate-sensitive US utilities is not fully determined by interest rates. For example, during the market rally from fall 2002 to summer 2007, the US utility sector generated a non-beta-adjusted annualized total return 5.2% higher (2.8% from better price appreciation and 2.4% from dividend reinvestment) than the S&P 500, while the 10-year Treasury yield rose from 3.6% to 4.9% (+130 bps) over this period. Valuation re-rating and earnings growth from generators, as economic growth tightened power markets and raised commodity prices, outweighed the negative impact of rising interest rates.

We would note furthermore that yield relationships have moved to unprecedented extremes such that, for example, the **dividend yield for US regulated utilities versus the 10-year Treasury yield currently sits at 7 standard deviations above the mean** from the historical pre-2008 environment (see graph below). **An even more dramatic relationship exists for the European utilities**. This suggests that policy rates are at such levels that there is substantial cushion against rising rates.

Source: Bloomberg

Finally, **we track interest rate risk in the Electron risk model for all positions**. We are not looking to make macro calls, and the portfolio's net interest rate risk is kept within acceptable limits as we select stocks in the global utility sector. This process has worked well for us as over 7 years we have posted strong returns and alpha generation in both rising and falling interest rate environments. As a result, many investors are pleasantly surprised to learn that despite perceptions of the global utility sector's interest rate sensitivity, **Electron's return correlation to interest rates is slightly lower than the HFRI Equity Hedge Index's return correlation to interest rates.**

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Appendix 1: The Team and Our Process

- Electron Focus

  Electron's universe of utility and infrastructure stocks is deep, comprising 375 companies with a market cap of $2.8 trillion. Stocks covered include the electric, gas, water and waste utilities in addition to infrastructure companies (defined as those levered to utilities or utility-like). Our approach is truly global as 40-60% of the portfolio's historical gross has been allocated outside the US.

- Electron Team

  Electron's cohesive, long-standing team consists of 8 members, including 5 investment professionals who have worked (with Jos Shaver as Portfolio Manager) at SAC Capital and the original Electron Capital for an average of 6 years. In addition, 4 of the 5 investment professionals have lived outside the US, a distinct competitive advantage given our global approach. Each investment professional brings his/her own specific expertise and diligent research to our process, working collaboratively across regions to conduct deep-dive research on the most compelling opportunities in the global utility sector.

  The other members of Electron complement the skills and experience of the investment team. Electron's experienced operations/investor relations professionals are former Intrepid Capital employees who worked with the Electron team during the first iteration of Electron (2005–2008) when the firm had a services agreement with Intrepid Capital.

  Finally, a Senior Advisory Board consisting of former C-level utility executives from around the globe has been with the team since the launch of the original Electron Capital in 2005, and all have rejoined for Electron's re-launch.

  As Portfolio Manager, Jos Shaver has covered the global utility and infrastructure sectors for the past 21 years, and his sector perspective benefits from his having lived 10 years abroad (5 years in Asia covering the Asian utilities and 5 years in Europe covering European utilities) and 11 years in the US. In addition, as Managing Partner, Jos controls all major decisions at Electron.

- Track Record (7 years)

  Electron's 7-year track record (3 years audited from the original Electron and 4 years from SAC Capital) has annualized 10.3% since inception and has been characterized by strong alpha generation on both the long and short side (80% of returns, based on Jensen's alpha calculation). Electron generated this 7-year track record during an exceptionally challenging period for global utilities – the MSCI World Utility Index has been the worst-performing MSCI Global Sector ex-financials over the track record period, down -0.2%. Notwithstanding, Electron's track record has bested the MSCI World Utility, S&P 500 and HFRI indices by 91%, 67% and 61%, respectively.

- Process

  First, given Electron's global approach to utility research**, we tend to have a clear competitive advantage with respect to early recognition of cross-border structural change** (e.g., how a change in Asian seaborne coal market might affect off-peak power prices and thus earnings for a Midwest US utility). Moreover, our global research approach allows us to gain perspective on structural change outcomes given our knowledge of global precedents and the likely reaction from various interested parties (e.g., governments, regulators, managements, customers, consumer groups, rating agencies, shareholders, debt holders, et al.) We analyze other global precedents, develop a thesis and then conduct deep-dive research to gain conviction. Once we have developed a structural change thesis, we proceed to a full bottoms-up analysis

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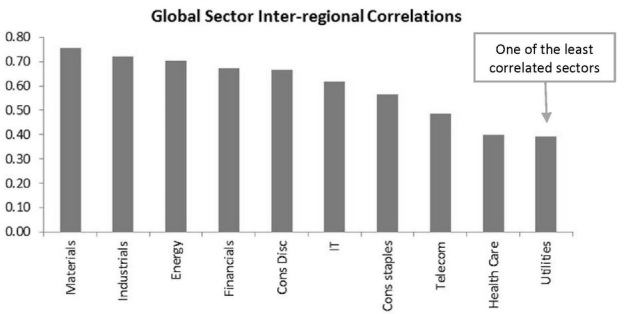
of the earnings impact for the relevant companies, and assess what might be priced in by thoroughly reviewing the Street's numbers and commentary. It should also be noted that the same structural event often affects not one but several companies, and the implementation of these structural changes are typically not one-day events. As such, depending on the situation, we may have the opportunity to capitalize on the same structural change event several times as it develops.

Our research process is our primary idea generator. We travel extensively and, collectively, the 5 investment professionals will have between 600 and close to 1,000 meetings a year as we speak with companies, regulators, consultants, sell-side analysts and governments.

- Why We Take a Global Approach - The "Greatest Gift"

Electron takes a global approach (historically, 40-60% of gross allocated outside the US) to the utility sector: i) to spot structural change and resultant inefficiencies early, ii) to provide a wider canvas to allocate capital around the globe to the most attractive (from a risk/reward point of view) alpha opportunities and, most importantly, iii) to enable the Electron Global Funds to take advantage of the **global sector's very low inter-regional correlation** (i.e., correlation of regions within the global sector; lowest of all MSCI global sectors – see below).



Source: MSCI, 7 years' weekly trailing correlation

We call this very low regional correlation the global utility sector's **greatest gift** to long/short investors as **it provides a greater return per unit of risk** if one has the ability to dynamically allocate capital to and generate alpha in all regions. There are few long/short global utility funds today given the global utility experience required to capture the greatest gift, as different countries have different utility market designs and structures.

The Electron process starts with a focus on structural change and we embrace the myriad of utility markets' differences around the globe because this approach leads to the most attractive alpha opportunities and the benefits of the "greatest gift". **We allocate capital dynamically** to the most attractive alpha opportunities in the global utility industry. As a result, the Electron Global Funds is only one fund, yet the "greatest gift" provides **the diversification benefit of 4 relatively uncorrelated regions and concentration in the globe's most attractive alpha opportunities**.

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- Capitalizing on Structural Change Timing

  Although some of the structural changes discussed earlier happen in days or weeks, e.g. fuel cost passthrough adjustments, others will take years to implement, for example, new capacity payment structures. Because of the sector's high earnings visibility, however, we do not have to wait until a particular structural change occurs for a thesis to play out. Utilities often have earnings visibility 2-3 years out (including Street estimates) which is in contrast to other sectors (e.g. tech) which often times do not have 2-3 quarters of visibility. As such, utility stock prices (and the Street's estimates) will begin to discount even some of the longer dated structural changes as clarity surfaces in the early stages. Therefore, there is a distinct competitive advantage for those who have an early understanding of such structural changes and the resulting earnings impact on affected utilities. We therefore focus our efforts on discerning the structural change opportunity early in an effort to come up with a view before it becomes obvious to the broader market.

  Moreover, there are often several opportunities over an extended time period to trade the same structural change as numerous stakeholders (e.g. government, regulator, company, customers, et al.) involved in the process distort market perceptions of the final outcome.

  Although **structural changes are the "home run" opportunities**, Electron returns are not limited to such changes, as we also consistently play for **"singles and doubles" in the global utility sector** with earning releases, regulatory reviews, dividend increases and decreases, relative value, regulatory arbitrage, etc.

  As evidence of Electron's ability to successfully trade both shorter- and longer-term structural changes, please note our sweet spot for generating returns over the 7-year track record has tended to be 45-90 days.

- Portfolio Construction

  Typically, the portfolio has 70-100 positions, but concentration is very important to generating returns. Historically, the top 10 longs represent 40-50% of the Fund's value, and top 10 shorts represent 30-40% of the fund's value. Typically we will have a 10% position in the portfolio; this is invariably a liquid, big-cap utility name with limited downside and a good degree of upside which is expected to be favorably affected by a key, underappreciated structural change.

  The **stronger the conviction (from a risk/reward point of view) in the alpha opportunity, the higher the gross we run**. This flexibility in portfolio construction (which we successfully proved over 3 years during the first iteration of Electron) provides a distinct advantage given the utility sector's many low-beta, low-volatility stocks. During the original Electron Capital period, gross ranged from 150% to 215% and a median of 185% over the period. We see maintaining a similar operating range for gross for the re-launch for Electron.

  Regarding nets, **we will always have a properly hedged product** as there are always opportunities on the short side to generate alpha. Over our 7-year track record period, the net averaged 22% net long. During the first 3 years of Electron, our net averaged 30% long. Given our bearish view on utilities over the last 4 years, the net averaged 17% net long.

- Risk Model and Risk Management

  We view utilities as distinct bundles of risk. Just as we are staunch supporters of sum-of-the-parts (SOTP) valuation, we are also believers in SOTP risk monitoring. As such, our **risk model developed over the last**

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8 years tracks approximately 60 industry, commodity, and financial risk metrics and is a focus for the Electron team. For example, consider oil price risk; although there may be no direct oil exposure in the portfolio, there is indirect oil exposure if we were to be short Drax, a coal-fired generator that sells power into the UK power market. In the UK, natural gas sets the marginal price of power, and in Europe, by convention, natural gas is linked to the oil price; as such, a short position in Drax represents an effective short position in oil. We track this risk along with numerous other factors that affect utilities, with the purpose of minimizing risks for which we have no competitive advantage that would justify taking on the exposure. We describe the risk model in more detail in the marketing book. In addition, we make the Electron risk model available for all prospective investors' due diligence.

Each position in the risk model contains a thesis write-up (to avoid thesis creep); upside, downside and relative targets (for valuation discipline); and a time frame (to avoid collecting stocks). In addition to tracking numerous industry, financial and macro risks, we also track alpha generation for all of our regions, sectors, subsectors and sub-subsectors, which provides the added benefit of a granular window on market flows. Finally, we incorporate **an exponential function** into the risk model **that provides an early alert** and focuses our attention when something is not working. For example, we might be short XYZ utility with 30% downside potential over 3 months, and put in a 15% loss limit. If in the first week XYZ runs up 5%, it will trigger a "FAST" move alert in the risk model. If we cannot explain why the position is moving against us, we will cover (i.e., when in doubt, get out). As mentioned, this is not a crowded space (rarely do utility names appear on the Goldman Sachs Hedge Fund VIP list) and many names are low-beta, low-volatility stocks. However, often when money is lost on the short side, it is the result of small daily losses that would not be noticeable on any given day, but over even short periods of time can add up to sizeable losses.

- Shorting Global Utilities

  - Experience with Dividends and Investor Behavior

    During the underperformance of the global utility industry over the last 4 years, Electron generated very strong alpha on the short side. We spend almost twice as much time on the short side as we do the long side; this is driven not only by the need for more short positions (given the asymmetry of risk) but also because of **the effect of utility dividends on investor behavior**. For example, we might be short a large cap utility with a 4% dividend yield that we believe to be a structural loser. The stock might decline 25%, which would push the dividend yield up to 5.5%. Even though our valuation models might tell us there is still another 10-15% valuation downside, we will tend to cover (unless we believe the dividend is materially at risk), as the dividend yield will begin to provide support for the stock. The precise level of the dividend yield at which we would cover is as much an art as a science, as it is based on our experience in a variety of situations and our views on investor behavior (particularly income funds) gained over many years of covering the sector. As such, you will find us trading around our short positions more frequently than our long positions.

  - Key to Electron's Process to Identify Dividend Change Candidates

    We also have developed a certain expertise in being early and correctly calling dividend changes – an event that can have a dramatic impact on the performance of utilities given the make-up of the investor base. In our long experience, utility CEO/CFOs will strongly defend the company's dividend (often borrowing or selling assets to fund it). As such, when they do finally cut the dividend, or talk about the possibility, they often surprise the market.

    It pays to be diligent in assessing the potential for a dividend cut, and to be early, since once CEO/CFOs accept that their business model is deteriorating, they will quickly take action, especially if their companies have less flexibility (particularly with respect to cutting capex and opex). Large-cap utility managements desire strong credit ratings and are reluctant to risk an investment grade rating.

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They are in a capital-intensive business and need to preserve deep, low-cost access to both the equity and debt capital markets. Moreover, collateral requirements for forward power price hedging typically will spike if a utility loses its investment grade rating, which can spur concern about liquidity.

Building conviction around a dividend cut thesis requires more than screening. **Our process focuses on researching capex flexibility, cost-cutting potential and asset divestiture potential to determine the flexibility** a company has under various scenarios. Our research process breaks capex into 3 buckets: i) committed capex (e.g. required by the regulator), ii) nondiscretionary capex (e.g. major plant overhauls – CEOs tend to avoid delays so as not to jeopardize billion dollar-plus assets), and iii) discretionary capex (CEOs can delay but may jeopardize future growth).

Regarding opex, we look for cost-cutting capability, which we estimate by breaking apart the opex line or by global benchmarking. Finally, we estimate the potential impact from possible asset divestitures and the resulting impact on earnings and leverage. Once we have completed the research work on capex, opex and potential divestitures, we model various sensitivities from structural changes or other key drivers that might cause a deterioration or improvement in a utility company's business model against forward-looking credit rating agency (S&P, Moody's, etc.) ratios.

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Appendix 2: Global Utility Sector Background

- History

To gain a deeper appreciation of why the global utility sector is attractive for long/short investing, it is helpful to briefly survey the history of the sector and describe the utility value chain's components.

The utility industry as we know it began in 1882 when Thomas Edison built the world's first generating station on Pearl Street in downtown Manhattan. In the early decades the industry evolved along multiple lines but eventually settled into an integrated, fully-regulated model, deemed appropriate as utilities were considered to have monopoly power. During the era of full regulation, **utility stocks were often characterized as low-risk "widow and orphan" stocks** in the US, and large parts of the global utility industry remained government-owned. During these early days, long/short investing could not have existed at scale, as the ability to find and generate short alpha would have been difficult given the sector's government ownership and bond-like nature of returns.

In the 1980s, Lord David Howell (formerly UK Secretary of State for Energy in the Thatcher government) advocated having then-fully regulated power plants compete to sell their production into a competitive power market (a "power pool") where the price of electricity would be set at the intersection of supply (power plants) and demand (industrial users and electricity supply companies selling to households). This led to the **world's first competitive power pools being rolled out in the UK in the early 1990s**. While based in Asia, Jos Shaver led UBS' Asian utility industry group and had the privilege of working with Lord Howell when UBS acted as advisor to the State Power Corporation of China on the restructuring of that country's national power industry.

Competitive power pools have since sprung up all over the world, and regulators have pulled apart previously fully-integrated utilities in the name of efficiency and maximizing competition. In addition, governments around the world have begun to privatize their state utility industries and organize bespoke competitive market structures that best meet their needs. These changes have resulted in a hybrid modern industry which continues to evolve.

The deregulatory impulse has brought tremendous benefits to national economies, driving down costs and improving efficiency and system reliability, but has also produced unintended consequences, e.g., the high-profile bankruptcies of Enron, British Energy, Dynegy, NRG, PG&E and others. As such, although one can still find low-beta, low-volatility defensive stocks, **the global utility sector has not been for "widow and orphan" investors for quite some time due to structural changes** in an evolving industry that continue to alter the investment landscape.

It is important to note that **the modern utility industry is still in its infancy**, having begun in the early 1990s, and its continued evolution – structural change – will provide ample long/short opportunities for the foreseeable future. **Structural change catalysts are driven by**: i) a utility's various stakeholders, including governments, managements, consumers, et al. which seek to mold the utility to their needs and objectives, or ii) variables outside of stakeholder control such as commodity prices and new technologies. A **specialist approach** to the global utility sector is essential as each country's market structure (and often that of regions within countries) can be very different as a result of the varying levels of competition, market concentration, geographic constraints, infrastructure bottlenecks, regulatory constructs, fuel supply availability and so on.

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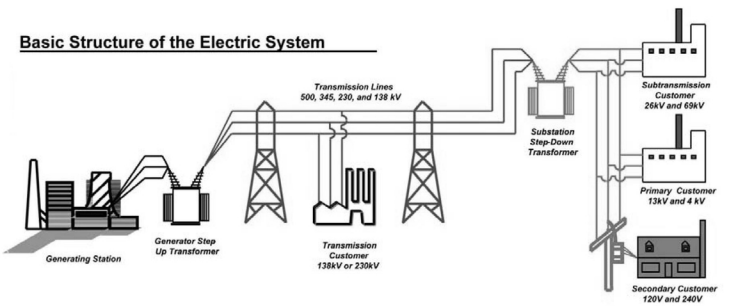
- Utility Value Chain

The electricity value chain for a modern day fully integrated utility consists of **Generation + Transmission + Distribution + Customers** (see diagram below). Each segment of the value chain is a different business, with distinct risks and economic drivers. Competition has surfaced in each part of the value chain other than transmission and distribution (which are fully-regulated assets as they are deemed to be natural monopolies). Still, regulators have learned to bring indirect competition even to monopoly-regulated businesses by encouraging returns based on efficiency improvements or benchmarking to comparable companies.



Source: US Department of Energy

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It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate foods and beverages.

The real world seems terribly far away, but with paparazzi often posted near by, it's dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for him again. But it was a security detail for a controversial head of state who had come for tea.

We met several years before he became arguably the world's most notorious sex offender. In 2002, his plane, a meticulously appointed 737, ferried a group of people to the TED conference in Monterey. He was the mysterious and peculiarly gracious host arriving after everyone had boarded: tanned, relaxed, attentive, soliciting every guest's story and views, and accompanied by three young women not his daughters, witty, poised, helpful, and beautiful—out of a men's magazine fantasy of the luxe life.

One more thing about this trip suggesting something of his unique view of the public world and what you got to see when you are near him. Google founders, Larry Page and Sergey Brin, with their company rising into the stratosphere, came out to see his plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then, sitting in the plane's plush

living room, they described, in what I could not be sure was a put-on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.

Since that trip, and through his travails, I have often been invited to his house to participate in the conversations that take place there.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein—*that* Epstein, most recently embroiled in charges involved under age girls and Alan Dershowitz and Prince Andrew—spends most of his day at his dining room table in the in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) conducting what must surely be the world's most extraordinary colloquial.

These meetings, and this lifestyle, have somehow stayed private or secret—or apart—not out of any formal or stated restrictions, but because, in some sense, it would be very hard to explain just what you're doing there with a brazen sex offender in a guffaw-inducing home flaunting all moderation.

And yet, defying disgrace, and tolerating his tone deafness—or mocking attitude toward the zeitgeist—so many come. Gladly. Willingly. Feeling that his invitation is quite an extraordinary privilege.

Among his frequent guests is Bill Gates, for whom Epstein has become a key advisor, proposing a way to leverage the resources of the Bill and Melinda Gates Foundation to accommodate many other fortunes, so that, Epstein explains, "you might join 50 or 60 billionaires on one giving project."

As part of a Gates-encouraged effort to get "out in front" of the notice that might be expected to greet the Gates association with him, Epstein agreed to these on-the-record conversations with me.

His subject, on a morning in late fall, sitting at the dining room table—its faux-baronial quality disturbed by an ever-present white board—is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment.

His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social, and personal calculations. He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy—the six men at this dinner, all technology entrepreneurs, representing, together, several hundred billion dollars and now trying to figure out how to use it to shape the world to their liking.

"In the past, only governments had this kind of money, money of a reality altering scale," says Epstein

in a chipper and smoothed-out Brooklynese. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as a philanthropist but as a sort of adviser or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably among the most influential people you've only heard of for reasons that have nothing to do with his influence.

Epstein sometimes seems to have an out-of-body attitude toward his own fate and bad press—that's something that occurs in a less interesting parallel world. Not long ago, when I met him for lunch in New York, he noted that he hadn't been out to lunch in a restaurant in ten years. It was a not particularly pleasant experience for him and we were done in 30 minutes.

On the other hand, Epstein's life sometimes seems part of a purposeful challenge: not just look at me, but do you even believe what you see? But, perhaps, he is

just oblivious to what others are thinking: a willful and in a sense fatal tone deafness.

Press accounts recycle the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel universe of absolute entitlement—with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, rather conforms to the scripted fantasies: somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women—in their twenties and thirties—who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, had just returned from an around-the-world honeymoon that Epstein had arranged for her. Some are, or have been, his romantic interests. His present girlfriend, whom he met four years ago at a dinner party in New York, has just graduated dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became a doctor—Epstein sent her to medical school—and married hedge funder Glen Dubin. Together they finance the Dubin Breast Center at Mount Sinai Hospital.

Epstein will sometimes move a meeting in his dining room outside to the park—his idea of going out to lunch is a Sabrett's hot dog—with the various girls in the house the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood. They mingle freely with his powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive students (which, of course, might be regarded as having its own fetish-like attraction). Epstein explicitly denies that there is an sexual quid pro quo. ("If you're screwing someone you work with they can come in late—that's what Jimmy Goldsmith used to say.") Still, the constant attendance of so many comely young women, seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or straight-faced way. And while it may be part of the appeal for the men who come to visit Epstein, it is as well a peculiarity they put up with in order to spend time with him.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the fact that, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to

whose turf, that, when they want to see Epstein, they tend to come to him. He's created a world and you enter it.

His conversations are less meeting-like—focused and agenda-driven—then narrative. In effect: the outside world comes to Epstein's and he eagerly solicits reports. It's a real time newspaper, or the news you don't read in a newspaper, market movements before they occur, the health and eccentricities of world leaders, high level government appointments soon to be announced.

It's Sunday lunch—in his schedule from a week last fall—with Gates, Mort Zuckerman, the real estate billionaire and owner of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor.

That evening its Sheikh Hamad Bin Jassim, the foreign minister of Qatar. Hamad lives across the street in a similarly furnished house—he and Epstein have the same decorator. (Epstein, in his relaxed and amused manner, keeps prodding: "Why are you financing the bad guys? What do you get out of that?")

Next morning, Epstein is joined for breakfast in the dining room by the lawyer Reid Weingarten, who's represented, among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sachs's Lloyd Blankfein. Weingarten, hoarse with a cold, is still lamenting his failed defense of former Connecticut Governor John Rowland. After a blow-by-blow of the trial, they discuss the Qatarian's visit—Epstein served

chocolate made from pistachios grown on the Sheikh's farm—and speculate about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny. There is, in Epstein's dining room, always an alternative version of world events—"perception versus reality," says Epstein, "not to imply that one necessarily has greater weight than the other."

"Why," I ask Weingarten, when Epstein briefly steps out of the room, "do so many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor and dotcom high flyer who now describes himself as the "the most active investor" in Bitcoin and the programmable currency space.

After a bit, Epstein invites his next appointment to join them: Larry Summers, the former treasury secretary and President of Harvard, off Diet Coke, digs deep into the Sheikh Hamad chocolates, then focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings, "I have opportunities here. But an additional feature of my decision problem, roughly speaking, is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being

seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in seeming dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, in the Epstein dining room (he seems rarely to use the rest of the house's 50,000 square feet), there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House, whose name I am asked not to use. There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov. Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's

explanation : "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")

Then Richard Axel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

The question is why, in the face of such disgrace, with the paparazzi so near, the high and might still come?

Perhaps simply that it's intelligence of a high order. Not just market moving information, but Epstein and Summers trying to unravel the conundrum of zero interest rates, or Epstein and Noam Chomsky on memory and language, or Epstein TK…

What goes on at Epstein's house might seem just to

confirm everyone's worst fears about power and the powerful: it's all insider stuff. But the conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world, such a buttoned-down and agenda-driven place, are actually hard to have.

"That's Jeffrey," says Mort Zuckerman, (whose paper, the Daily News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye.

On Epstein's part, there is the wink: In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: "At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest

brokers. That's the usefulness of disgrace."

In some sense, too, it is perhaps generational: Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one.

Epstein often tells his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years. Without a college degree, hence by a slight of hand, he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

Dalton fathers perhaps sensed in him a young man on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood

paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) Another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg.

Hence, Epstein, like many in the late '70s, arrived on Wall Street.

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction. "In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a '50s mentality. But in the mid '70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it.."

He soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin

Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.

If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. "I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there." Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million. "The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased. You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

For a period, one part of his activities, he says, was recovering monies for countries looted by exiled dictators or military strongmen. Then, in his telling, he was representing a series of vastly wealthy people and families—not just doing their bidding or their investing, but helping them to navigate the ambitions of their wealth. If they had big dreams before, it's nothing to what they can have now.

If early in his career he might have seemed like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator. At just about this point in the narrative, the incredulity about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without position, public holdings, or obvious paper trails. His is a questionable substrata of wealth, without institutional credentials or bona fides. He's a freelancer. That's the rub: he doesn't work for anyone.

Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as

editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmailed. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

He joined the board of Rockefeller University. He was suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He bought an airplane. Then another. He expanded his holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island.

He befriended Bill Clinton in his new after-office life—and that would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's

ultimate sleaze ball—was suddenly being ferried around in the jet of…*who* exactly? The New York Post was the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. "I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people."

I met Epstein around this time, on the flight out to TED. Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. (Epstein's flirtation with the media would result in his backing an unsuccessful effort, of which I was a part, to buy New York Magazine in 2004.)

New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such wealth and influence. Epstein, sensing that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

"Then you should have lived in a two bedroom

apartment in Queens," responded Carter.

And then the real troubles began. Epstein had a prodigious massage parlor outcall habit especially in Palm Beach with its many "Jack Shacks." After Epstein's round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein's house called the police. The police interviewed the girl—who was TK at the time, but whose website identified her as 18—and the girl supplied the names of other girls, some of whom were also younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18; the others were in their 20s and 30s (one woman was in her 60s)—a number of whom gave statements describing happy-ending massages. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than this.)

Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

The release by the Palm Beach authorities of the depositions by the 18 girls describing the incremental details of the sex acts, the timing of the charges coming just after Rush Limbaugh's high profile Palm Beach drug bust, the Clinton connection and then with the

sudden interest of the Bush FBI in the case, moved the case from solicitation to scandal, and a plea deal with a sentence of 18 months.

He got out of jail in 2009, serving 13 months, and moved mostly seamlessly back into his life, to the shock-shock of tabloids whenever they are reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprisingly few others dropped him, the Clinton's did, an irony of the present tabloid interest in Epstein's old address book with its many Clinton contacts. And his sex offender status has transformed him from libertine playboy to pedophile in tabloid parlance.

While he has regularly entertained PR proposals aimed at his public rehabilitation, until Gates prodded him, and until this recent renewed tabloid fever, Epstein had concluded that he was perfectly satisfied living behind high walls and in his own exclusive club. Even the recent Dershowitz-Prince Andrew chapter seems like a parallel disturbance rather than something that is actually affecting him. "Bad press is not something actually bad," he notes, trying to balance perception and reality.

But true or not, the story has taken on a life of its own, with the US and British tabloid press continuing, so far unsuccessfully, to search for a smoking gun connecting Clinton to underage girls, which could

have—many obviously hope—the effect of derailing the Hillary Clinton presidential campaign.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice to follow, Epstein would have done little differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of morality, custom, politics, feminists, the media, that's just a bit of bad luck.

And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent playboy (excuse me, pedophile) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to take him as he comes. Epstein is their confidant. Not the only nexus of them, but one of them. Dr. Epstein. Lay on my couch. As he is

everybody's confidant, everybody becomes his confidant. This is the back and forth, the power loop. His expertise is knowing what other people know. Which surely offers a unique sense of confidence that it is possible to understand how the world works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich.

In the last days of my interviews with Epstein, he was called by a particular world-stage individual, among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. Epstein welcomed him to the club.

From: Richard Kahn [redacted]
Sent: 7/22/2015 5:29:11 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Republicans gird for the Donald Trump debate

Importance: High

as you predicted..

http://www.politico.com/blogs/media/2015/07/republicans-gird-for-the-donald-trump-debate-211033.html?ml=tl_5_b#

Debate Schedule

August 6, 2015
9pm ET - Republican Primary Debate
Aired On: **Fox News Channel**
Location: **Quicken Loans Arena in Cleveland, OH**
Sponsors: Fox News, **facebook**
Moderators: **Bret Baier, Megyn Kelly and Chris Wallace**
Rules: **Top 10 candidates in an average of 5 national polls**
Candidates**: To be determined**
Notes**: Fox News has added a candidate forum at 1pm ET the same day for candidates who don't make the debate cut**

September 16, 2015
Reagan Library Republican Debate (Press Release)
Aired On: CNN and Salem Radio
Location: Reagan Library in Simi Valley, CA
Sponsors: Reagan Library Foundation, CNN, Salem Media Group
Moderators: Jake Tapper, Hugh Hewitt,
Rules: Split field into Segment B (top 10 candidates) and Segment A (remaining candidates getting at least 1% in polls) (Details)
Candidates: To be determined

October 28, 2015
CNBC Republican Debate
Aired On: CNBC
Location: University of Colorado in Boulder (Press Release)
Sponsors: CNBC (Press Release)
Candidates: To be determined

November, 2015*
Republican Primary Debate
Aired On: Fox Business Network
Location: Wisconsin
Sponsors: Fox Business Network
Candidates: To be determined

December 15, 2015
Republican Primary Debate
Aired On: CNN
Location: Las Vegas, Nevada

Sponsors: CNN, Salem Media Group
Candidates: To be determined

2016

January, 2016*
Republican Primary Debate
Aired On: F**ox News Channel**
Location: Iowa
Sponsors: Fox News
Candidates: To be determined

February 6, 2016
Republican Primary Debate
Aired On: ABC
Location: St. Anselm College in Manchester, New Hampshire
Sponsors: ABC News, IJReview.com (Press Release)
Candidates: To be determined

February 13, 2016
Republican Primary Debate
Aired On: CBS
Location: South Carolina
Sponsors: CBS
Candidates: To be determined

February 26, 2016
Republican Primary Debate
Aired On: NBC and Telemundo
Location: Texas
Sponsors: NBC/Telemundo, National Review
Candidates: To be determined

March, 2016*
Republican Primary Debate
Aired On: Fox News Channel
Location: TBD
Sponsors: Fox News
Candidates: To be determined

March 10, 2016
Republican Primary Debate
Aired On: CNN
Location: Florida
Sponsors: CNN, Salem Media Group
Candidates: To be determined

*Debate sponsor has not yet named specific date

Top 10 Media Stocks for 2015

By Dan Moskowitz | March 19, 2015 AAA |

The following list is broken down into Top-Tier Media Stocks and Speculative Media Stocks. It might surprise you that some of the names on the latter list aren't on the former list, but there is a simple reason for this, which will be revealed below.

Top-Tier Media Stocks

Walt Disney

The Walt Disney Co. (DIS) is one of the strongest brands in the world. It also possesses multiple revenue streams and pricing power. Q1 EPS jumped 23% year over year based on record revenue. When a company delivers record revenue, that trend doesn't make a sudden U-turn. If there's going to be a turnaround for the worse, it will take time to play out, giving you time to exit your position. (For related reading, see: *This Company Is No Mickey Mouse Operation*.)

CBS

CBS Corp.'s (CBS) Q4 revenue increased 3% and diluted EPS improved 8%. CBS also announced a $1 billion share buyback in the first quarter. This will significantly reduce the share count, which should improve earnings. CBS will once again have Thursday Night Football, and it will be the home of Super Bowl 50. It's also home to regular-season NFL games, March Madness and The Masters. However, its reach goes well beyond sports.

Comcast

FY2014 revenue at Comcast Corp. (CMCSA) increased 6.4%. Operating cash flow and EPS improved 6.9% and 25%, respectively. Comcast also increased its dividend 11% and announced that $4.25 billion of its $10 billion share buyback program would take place in 2015. (For more, see: *This Company is as Unavoidable as it is Unloved*.)

Twenty-First Century Fox

Twenty-First Century Fox, Inc.'s (FOXA) Q2 operating income before depreciation and amortization increased 12%. Fox studios enjoyed 24 Academy Award nominations in 2015, making it the industry leader. Twenty-First Century Fox also recently created the Europe's leading pay TV business.

Google

Google Inc. (GOOGL) is known as more of a technology company than a media company, but its YouTube segment consumes approximately 15% of all broadband traffic in the United States and Canada (only Netflix, Inc. (NFLX) is higher at 35%). Google also makes this list because of its $62.63 billion in cash, which means it can enter any business it pleases. If it chooses to expand its media presence, then it would likely steal share from some of the current industry leaders. (For related reading, see: *How Google's Self-Driving Car Will Change Everything*.)

Speculative Media Stocks

Charter Communications

Q4 revenue jumped 9.9% at Charter Communications, Inc. (CHTR) thanks to higher customer penetration on Internet, video, and commercial businesses. Another positive is that Berkshire Hathaway Inc. (BRK.A) recently increased its position in CHTR by adding 1.2 million shares. CHTR now represents 1.35% of the fund's portfolio. The reason CHTR is on the speculative list is a lack of profitability.

Discovery Communications

Differentiation is the key here thanks to Discovery Communications, Inc.'s (DISCA) success with docudramas. In FY2014, revenue increased 13%, adjusted earnings per diluted share improved 13%, free cash flow increased 2%, and $1.4 billion worth of stock was repurchased. The biggest risks here are a challenging U.S. market and currency headwinds. It should also be pointed out that there is an 11% short position on the stock. (For related reading, see: *A Breakdown of Stock Buybacks*.)

Viacom

MTV, VH1, CMT, BET, Nickelodeon, Nick Jr, Comedy Central, TV Land, SPIKE, and more. Do these sound like brands that are likely to suffer? No. Viacom, Inc. (VIA) is a profitable company that pays a small dividend. On the other hand, a debt-to-equity ratio of 3.88 isn't comforting.

Time Warner

Time Warner Inc. (TWX) has 165 channels across 200 countries. This includes HBO. In FY2014, revenue increased 3%. That's not spectacular, but adjusted EPS jumped 18%, which now represents six consecutive years of adjusted EPS growth in the high teens. Time Warner also returned $6.6 billion to shareholders via dividends and buybacks throughout the year. Over the long haul, cable companies will have a difficult time competing against streaming services, but all is okay for right now.

Scripps Networks Interactive

Among Scripps Networks Interactive, Inc.'s (SNI) properties are Home and Garden Television, Food Network, Travel Channel, DIY Network, Cooking Channel and Great American Country. These are strong brands. Strong enough that Scripps Networks expects FY2015 revenue to increase approximately 4%. The company also expects selling, general, and administrative expenses to come in between flat and down 2%. Either way, it's a positive when revenue is outpacing SG&A expenses. Furthermore, Scripps Networks has announced that it's adding $1 billion to its share buyback program and increasing its dividend by 15%. The risk here is the stock's sensitivity to broader market corrections. (For a look back to 2009, see: *Scripps Network Interactive Worth a Look*.)

Performance Comparisons

Another reason why some stocks made the top list and others did not is performance. If a stock can't appreciate in a bull market, then how would you expect it to perform when the trend reverses? Capital preservation should be the number one priority for a savvy investor. Below are total return numbers for each company as of 3/18/2015).

	1-Year	3-Year	5-Year	10-Year
DIS	33.09%	36.87%	27.03%	15.19%
CBS	-3.95%	26.94%	23.19%	12.56%
CMCSA	19.26%	27.62%	23.13%	13.40%
FOXA	6.46%	26.99%	24.13%	8.83%
GOOGL	-6.61%	21.87%	14.84%	20.18%
CHTR	50.27%	43.56%	40.36%	n/a
DISCA	-25.98%	8.93%	13.74%	n/a
VIA	-20.33%	11.19%	17.28%	n/a
TWX	37.35%	38.08%	25.34%	9.86%
SNI	10.10%	15.26%	12.24%	n/a

The Bottom Line

The Top-Tier Media Stocks have outperformed Speculative Media Stocks over the past three years (for the most part). Therefore, you should strongly consider the first set of stocks listed above. While it's entirely possible they all underperform in 2015 if the market falters, these are elite names that are highly likely to be around for a long time. Even if the worst occurs, you will have an opportunity to add more to your position at cheaper prices. (For related reading, see: *Buying Facebook Stock, A Beginner's Guide*.)

Read more: http://www.investopedia.com/articles/active-trading/031915/top-10-media-stocks-2015.asp#ixzz3gdqLDgWm
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Internet & Society: The Technologies and Politics of Control
Professor Jonathan Zittrain co-taught with Professor Joi Ito, Director of the MIT Media Lab
Harvard Law School
Winter 2017

Mon-Fri
10:30am-noon; 12:45pm-2pm
Milstein West AB

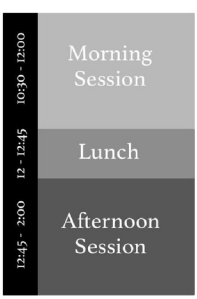
Syllabus

I. Course Description

This course offers a rigorous introduction to the field of cyberlaw. We will investigate the evolving nature of online architecture and activities, and the ways in which law has been, and will be, leveraged to influence them.

Course themes include the complex interaction between Internet governance organizations and sovereign states, the search for balance between the ease of disseminating information online and the interest of copyright holders, privacy advocates, and others in controlling that dissemination, and the roles of intermediaries and platforms in shaping what people can and cannot do online. The course will include an array of learning and teaching methods. Students will be expected to participate in a variety of activities.

II. Class Schedule



The class meets every day from January 3rd to January 13th in Milstein West AB. Each day will be divided into three phases: the morning session from 10:30am to noon, lunch from noon to 12:45pm, and the afternoon session from 12:45pm to 2pm. Lunch will be provided.

A more detailed schedule of the topics we will be covering each day follows below.

Topics (2 per day other than the last day)

Day 1: Introduction, Right to Be Forgotten and Jurisdiction
Day 2: Copyright, DRM debate between Professor Ito and Professor Zittrain (afternoon session)

Day 3: Cryptocurrency
Day 4: Private Infrastructures for Government Surveillance, John DeLong/Bruce Schneier talk (morning session)
Day 5: Net Neutrality and Internet Architecture, Dialogue with Andy Ellis (afternoon session)
Day 6: Weaponized Social, Open discussion with John Palfrey (morning session)
Day 7: Free vs. Proprietary Code and Content, Dialogue with David Clark (afternoon session)
Day 8: Governance, Artificial Intelligence
Day 9: Conclusion

III. Class Requirements

The purpose of this class is to give students a sense of the historical battles of the Internet, what different actors were thinking, what they were trying to accomplish, and what levers they pulled in order to select for specific outcomes. Students should apply what they have learned from historical examples to a current Internet issue discussed in class and describe in a 12-15 page paper what a viable solution might look like. Solutions could take the form of a policy recommendation, project proposal, or code. The paper or project proposal will be due on Friday, January 20th, and may be submitted by email to Samantha Bates at sbates@law.harvard.edu.

IV. Class Materials

There is no required textbook for this class. All readings will be available online on the class H2O playlist: https://h2o.law.harvard.edu/playlists/51511.

We will have a slack channel for the class. Please click on the following link to sign up: https://internet-society2017.slack.com/signup.

Students should bring their laptops to class to use for daily activities, but all electrical devices must remain off during lectures.

V. General Information

Professor Zittrain and Professor Ito will be available for group office hours after class on the following dates:

- Wednesday, January 4th from 2:15-3:15pm in Milstein West.
- Monday, January 9th from 2:15-3:15pm in Milstein West.
- Wednesday, January 11th from 2:15-3:15pm in Milstein West.

For other general scheduling/appointment questions, please contact:

Amanda McMahan
Assistant to Professor Zittrain
Office Phone: [redacted]
Email: [redacted]
Office location: Griswold Hall, 5th floor, Room #505

Yuko Barnaby
Assistant to Media Lab Director Ito
Office Phone: [redacted]
Email: [redacted]
Office location: MIT Media Lab, E-14, Director's Office 245

For course related (readings/paper) questions, please contact:

Samantha Bates
Research Associate
Email: [redacted]

Natalie Saltiel
Coordinating Editor for the Journal of Design and Science (JoDS)
MIT Media Lab
Email: [redacted]

For other information about the class, please contact:

Shailin Thomas
Teaching Fellow
Email: [redacted]

Jordi Weinstock
Visiting Scholar
Email: [redacted]

Reading Assignments

Day 1: Introduction

Welcome! We aspire to the implausible: a nine-day introduction to the unusual dynamics of the world's digital space, sufficient for a strategic understanding of what makes it difficult (but far from impossible) to regulate or shape; who's trying to do it nonetheless; and how such efforts have fared over the past twenty years, with an eye towards lessons for influencing the space and the behavior within it today.

In addition to offering some frameworks for thinking about Internet architecture and policy, and the curious open and generative nature of the phenomenon, we will delve into the net as a contingently global phenomenon, and the way that complicates regulation by traditional sovereigns. Our case study will be the current debates around implementation of Europe's "right to be forgotten" in search engine results. As you complete the readings, you might see how you'd answer the question of what a state like France's view should be towards the scope of its RTBF regulation, and whether the kind of "zoning" described in the Cato Institute article from thirteen years ago (!), is realizable and desirable.

Readings:

- C.P. Snow, "The Rede Lecture: The Two Cultures," (1959) pages 1-9 http://s-f-walker.org.uk/pubsebooks/2cultures/Rede-lecture-2-cultures.pdf archived at https://perma.cc/XB6F-N9K8.
- John Perry Barlow, "A Declaration of the Independence of Cyberspace," *Electronic Frontier Foundation* (February 8, 1996) https://www.eff.org/cyberspace-independence archived at https://perma.cc/H2CZ-N2EX.
- Locke, Levine, Searles, & Weinberger, The Cluetrain Manifesto: 95 Theses (1999) http://www.cluetrain.com/book/95-theses.html archived at https://perma.cc/2BLT-6ZEL.
- Jonathan Zittrain, *The Future of the Internet and How to Stop It*. New Haven: 2008 https://dash.harvard.edu/bitstream/handle/1/4455262/Zittrain_Future%20of%20the%20Internet.pdf?sequence=1 archived at https://perma.cc/NM9D-7Y2V.
    - Read pages 1-5, 7-9, 57-61, 63-65, 67-71.
- Yochai Benkler, *The Wealth of Networks.* New Haven: 2006. http://www.benkler.org/Benkler_Wealth_Of_Networks.pdf archived at https://perma.cc/BC4A-96KP.
    - Read pages 154 (beginning "Imagine a world") - 161

Jurisdiction

- Jonathan Zittrain, "Be Careful What You Ask For: Reconciling a Global Internet and Local Law," WHO RULES THE NET?, Cato Institute (2003) http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/2003-03.pdf archived at https://perma.cc/3JE9-GM3R.

[OPTIONAL: Right to Be Forgotten readings]

- Zoe Bedell, "Google to France: 'Forget You' - An Update on the Right to Be Forgotten" *Lawfare* (May 25, 2016) https://www.lawfareblog.com/google-france-forget-you-%E2%80%93-update-right-be-forgotten archived at https://perma.cc/W9EX-5AGZ.
- Google Spain v. Mario Costeja González ECJ opinion (May 13, 2014) http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065 archived at https://perma.cc/3ARS-3XC4.
    - Read paragraphs 89-99
- Brendan van Alsenoy and Marieke Koekkoek, The Extraterritorial Reach of the EU's 'Right to Be forgotten' (January 19, 2015). CiTiP Working paper 20/2015. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2551838 archived at https://perma.cc/B3SF-YJ3W.
    - Read pages 3-22

Day 2: Copyright

Copyright was once thought of as the defining battle of consumer networking. Academic technologies brought into the mainstream made it trivial to prepare and distribute perfect copies of copyrighted work without permission -- and the comparatively powerful organizations representing copyright holders saw this as an existential threat.

We will read some of the "grim joy" experienced by Internet freedom types in dancing on the grave of copyright in the mid-1990s -- and immerse in some of the law and policy changes effected in the United States to deal with the problem without running up against the equities of rapidly-growing intermediaries of online and Internet service providers (turns out, there's a difference).

The copyright wars revealed a variety of strategies that we'll look at with the benefit of years of hindsight, including lawsuits against network providers, software makers, and individual users both sending and receiving files, as well as technical changes designed to make it more difficult to share items that wish not to be shared. Ultimately we are drawn to the question of whether the wars were won by one side or another, or whether it's more accurate to say that they simply faded away. What issues today feel make-or-break, yet could simply fade rather than be resolved, and why?

We'll end the day with a peek into, and practice of, a current intense if obscure debate: that of whether digital rights management hooks should be placed into standards for Web browsers.

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Day 3: Cryptocurrency

One view of the progression of digital technology has been roughly from amateur to professional, from open to closed, and from chaotic to ordered -- as the early successes from left field of Google, Facebook, and Twitter enter publicly-traded adulthood. At the ripe year of 2017, are there still digital disruptions to be had?

The phenomenon (and increasing literal value) of cryptocurrency -- and, for that matter, the foundational blockchain technologies on which it can be based -- seems to indicate that there are still surprises from left field. What does the rise of cryptocurrency tell us about the state of cyberspace, and what should we expect -- and hope for -- next?

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Day 4: Private Infrastructures for Government Surveillance

Digital privacy has at times been understood as privacy against corporate intrusion (think ad networks); against government (think the various government intelligence-gathering establishments around the world); and against one another (think drones as well as more pedestrian technologies that empower people to document facts about, or even doxx, each other).

This session will look at the second form of surveillance, especially as effectuated through the cooperation or compulsion of private intermediaries. How successful is such surveillance, and will it continue to be effective as the public reacts by potentially adopting privacy-enhancing tools? How successful do we want it to be, and how might frameworks agreeable within jurisdictions that embrace the rule of law be used or abused within those that do not?

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Day 5: Internet Architecture/Net Neutrality

We increasingly assume the availability of commodity networking -- a flat fee for access -- even as the way in which we experience the Internet is evolving through a curious microeconomics, a mishmash of policies designed to subsidize or regulate access, and a sometime ability to arbitrage around arrangements through technologies to facilitate access sharing and virtual tunneling.

How is Internet access likely to evolve, and what choices exist for polities with particular ideals about how it should work?

Discussion will include Andy Ellis, Berkman Klein Center Fellow and CSO of Akamai, one of the most important companies that people haven't heard of.

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Day 6: Weaponized Social

The time when the solution to bad speech could be advanced as simply more speech might seem quaint. The famously libertarian Electronic Frontier Foundation recently released a white paper in which it acknowledged a line between a clash of ideas and flat-out harassment, with the latter causing less rather than more robust debate. Separately, concerns about outright false news that spreads virally have inspired calls for action by intermediaries like Facebook -- a self-described technology, rather than media, company.

Applying lessons from the conflicts of the past two decades online, how might we agree upon a vision for social networking even if we disagree on many substantive issues to be debated there, and what are the roles, if any, of regulators and private platforms in establishing boundaries on behavior online through code or legal sanction?

Is it more difficult to agree on a vision is our media is no longer *about* the battlefield or the real world but *is* the battlefield and the real world?

Readings:

The Problem

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Day 7: Free vs. Proprietary Code and Content

This day examines quite different models for the development and distribution of software -- which can also serve as models for hardware, and for content. What kind of ecosystem, featuring what models, is desirable?

We will think about current issues in cybersecurity as a case study in why free vs. proprietary code might matter, and take up the question of how regulation might be applied when there *are* no easily identified intermediaries in the production of code.

And we will hear from the legendary David Clark, one of the framers of the Internet.

Readings:

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Day 8: Governance

The tensions between free vs. proprietary software help focus us on foundational questions of governance that are threaded through the course. To what extent should new technologies be shaped and shared by anyone without gatekeeping? 2017 may find the Internet in middle age. Do its puzzles suggest anything about whether and how to resolve governance questions for more newly mainstreamed technologies like machine learning and other AI?

In addition to the challenges that the Internet has provided in regulation and governance, the inability to really understand what many "learned" algorithms do, and their ability to have properties and abilities beyond the capabilities of their initial designers, presents additional challenges when thinking about whether and how to regulate the research, as well as the deployment, of AI. Phenomena like digital currencies and distributed AI systems reprises the ideas and challenges of Barlow's declaration of independence of cyberspace.

Readings:

Governance: IoT Security

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Feds explain sweet deal for billionaire sex offender Epstein

By JANE MUSGRAVE
The Palm Beach Post

WEST PALM BEACH, Fla. — Federal prosecutors in Florida went on the offensive this month, denying allegations that they bowed to pressure from billionaire Jeffrey Epstein — a resident of the Virgin Islands and Palm Beach, Fla. — and his high-priced lawyers at the expense of dozens of teenage girls he sexually abused.

Jeffrey Epstein

In their first public comment since 2007 — when they negotiated a deal that allowed Epstein to escape federal charges — prosecutors filed hundreds of pages of documents in U.S. District Court, explaining what led to the now infamous non-prosecution agreement that has been decried as "a sweetheart deal."

Contrary to claims by attorneys representing two of Epstein's victims in a lawsuit against the federal government, Assistant U.S. Attorney Marie Villafana said she and her superiors were trying to help the traumatized young women when they agreed to let Epstein plead guilty to state prostitution charges.

The now-64-year-old money manager, who spends most of his time on his estate Little Saint James in the territory, served 13 months of an 18-month sentence in the Palm Beach County Stockade. He was allowed to leave each day to go to work.

Hoping to persuade U.S. District Judge Kenneth Marra to throw out the lawsuit that accuses the government of violating the federal Crime Victims Rights Act, Villafana said she tried to keep Epstein's victims informed about the investigation and the eventual plea deal. But, she said, negotiations were sensitive and neither Epstein, his victims nor their attorneys made it easy.

For instance, she said, most of the young women were extremely reluctant — or simply refused — to testify against Epstein, who had paid them to give him sexually-charged massages at his mansion.

Contrary to claims by attorneys representing two of Jeffrey Epstein's victims in a lawsuit against the federal government, Assistant U.S. Attorney Marie Villafana said she and her superiors were trying to help the traumatized young women when they agreed to let the now 64-year-old money manager plead guilty to state prostitution charges.

One of the women who is now suing the government insisted Epstein never abused her, Villafana wrote in a sworn affidavit.

"I hope Jeffrey, nothing happens to Jeffrey because he's an awesome man and it would really be a shame," the woman, identified only as Jane Doe 2, told FBI agents in 2007.

While Villafana said she didn't believe her, she also understood the young woman's suffering. Further, she knew she couldn't force her or Epstein's more than two dozen other victims to testify against him.

Jane Doe 1, who is also suing the government, agreed to testify. But Villafana said one victim wouldn't have been enough to convict Epstein.

Rather than let Epstein use his considerable influence to evade prosecution, she and top officials at the U.S. Justice Department crafted the plea deal.

In exchange for pleading guilty to charges of solicitation of prostitution and soliciting minors to engage in prostitution in Palm Beach County Circuit Court, Epstein was not charged with any federal counts. As part of the agreement, Epstein had to register as a sex offender and agree to settle civil lawsuits that his roughly 30 victims filed against him.

Getting Epstein to agree to pay restitution to his victims and register as a sex offender were key, Villafana wrote. Prosecutors wanted to assure his victims that they would be compensated and that "other minors throughout the country" would be protected, she wrote.

But shortly after Epstein signed the agreement on Sept. 24, 2007, he began fighting it, she said. He and his legal team, including former U.S. Solicitor General Kenneth Starr, whose investigation led to President Bill Clinton's impeachment, contacted high-level justice department officials. They challenged the terms of the non-prosecution agreement.

Fearing it was falling apart, Villafana said her office and the FBI resumed the investigation and informed the victims of that by letter in January 2008.

In their lawsuit, the victims' attorneys, Bradley Edwards and Paul Cassell, say the letter is evidence of their claim that prosecutors lied to the victims. They also claim that prosecutors never told Epstein's victims about the plea deal.

Villafana said she didn't tell the young women about the terms of the agreement, fearing Epstein's attorneys would use it to crush them if federal charges were filed and the case went to trial. Savvy attorneys would argue that the women were testifying against Epstein because federal prosecutors told them they would get paid restitution if they did, she said.

When she learned Epstein planned to plead guilty to the two charges in circuit court on June 30, 2008, Villafana said she immediately notified Edwards. She said she told him to alert his clients so they could attend the hearing. None did.

Cassell, a law professor at the University of Utah, shrugged off the government's new claims, calling them "meritless." A written response will be filed at the end of July, he said.

WEDNESDAY LOCALS NITE

TOP NOTCH
AMAZING SUNSETS GREAT FOODS
LIVE ENTERTAINMENT 6 - 9 PM
RIDE THE VIEW
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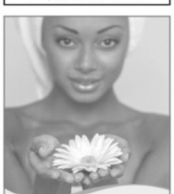
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BLOCKCHAIN CAPITAL, LLC

CCP II, LP

OCTOBER 2015

ONE FERRY BUILDING, SUITE 255 SAN FRANCISCO, CA 94111 investor@blockchain.capital

TECHNOLOGY THOUGHT-LEADERS ARE CONVINCED

Bill Gates:
"Bitcoin is better than currency…a technological tour de force."

Ben Bernanke
"[Virtual Currencies] may hold long-term promise, particularly if the innovations promote a faster, more secure and more efficient payment system."

Eric Schmidt
"Bitcoin is a remarkable cryptographic achievement and the ability to create something that is not duplicable in the digital world has enormous value."

Milton Friedman (1999)
"I think the Internet is going to be one of the major forces for reducing the role of government… The one thing that's missing, but that will soon be developed, is a reliable e-cash"

Peter Thiel
"I do think Bitcoin is the first encrypted money that has the potential to do something like change the world."

Al Gore
"I'm a big fan of Bitcoin…Regulation of money supply needs to be depoliticized"

David Marcus (former CEO PayPal)
"I really like Bitcoin. I own Bitcoins. It's a store of value, a distributed ledger. It's a great place to put assets."

INCUMBENTS EMBRACING THE BLOCKCHAIN

NASDAQ - partnered with Chain to launch private company exchange

"As blockchain technology continues to redefine not only how the exchange sector operates, but the global financial economy as a whole, NASDAQ aims to be at the center of this watershed development," - Robert Greifeld, NASDAQ CEO,

Citi - launched "Citicoin" project

"Blockchain technology not only has an opportunity to transform financial services but also extend far beyond payments to new use-cases and applications across industries," - Debby Hopkins, Chief Innovation Officer at Citi

Santander - published: "Fintech 2.0 Paper: Rebooting Financial Services"

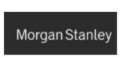
"Blockchain technologies could reduce banks' infrastructural costs by $15-20bn a year by 2022"

Standard Chartered

"The banking industry is starting to see the many potential benefits of its underlying technology. For banks, the blockchain has the potential to become a technology model for a low-cost and transparent transaction infrastructure." - Anju Patwardhan, Chief Innovation Officer

Royal Bank of Scotland - announced a $3.5 Billion technology revamp over next 3 years

"I don't know what's going to succeed. What I'm certain of is that we are going to see blockchain solutions, peer-to-peer solutions emerging in our industry and we want to be close to that development." - Simon McNamara, Chief Administrative Officer at RBS



THREE TECHNOLOGY EVOLUTIONS OF DISRUPTION

The PC Era	The Internet Era	The Blockchain Era
Semiconductor Technology	*TCP/IP Protocol*	*Bitcoin Protocol*
intel, Microsoft	Google, amazon, facebook, ebay	coinbase, itBit, chain, ChangeTip, ripple

BLOCKCHAIN CAPITAL

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EXPERIENCED TEAM IN INVESTING

	BART STEPHENS	BRAD STEPHENS	BROCK PIERCE	PAUL STEPHENS
EXPERIENCE	• Stephens Inv. Mgmt. • Ivanhoe Capital • E*Trade Group • Princeton	• Stephens Inv. Mgmt. • Fidelity Ventures • CSFB • Furman Selz • Duke	• Chairman of the Bitcoin Foundation Board • Founded 15x Startups • Raised > $200M • Invested in > 25x Startups	• Robertson Stephens & Co. • RS Investments • Duke Endowment • UC Berkeley Endowment
RECOGNITION	#2 U.S. Long/Short Hedge Fund* $500 Million AUM 2.5x Venture Fund, 11.5% IRR		Founded 8 crypto currency startups and often referred to as the "father of digital currency"	40 Years in Silicon Valley Investment Management and Banking

Leaders in Technology Investing

Incubated and Founded Dozens of Startups

100's of Silicon Valley Investments

*Absolute Return Magazine 2004

SUCCESSFUL TRACK RECORD OF HOME RUNS

PRIVATE		
Q RelateIQ	2014	**25.0x**
ValueClick	2004	**8.1x**
sina	2008	**6.9x**
RUPTURE	2008	**5.0x**
ADDEPAR	2014	**TBD**

(7 IPOs and 13 Acquisitions)

PUBLIC		
tencent.com	2014	**77.0x**
illumina	2009	**39.0x**
US AUTOPARTS	2010	**4.6x**
ISILON SYSTEMS	2011	**5.1x**
NCSOFT	2007	**3.4x**

(17 Public Acquisitions)

Private and Public Exits through Multiple Market Cycles

BROCK PIERCE - CHAIR OF THE BITCOIN FOUNDATION

INDUSTRY LEADER AND SPOKESPERSON

Money 20/20

Milken Institute

Singularity University

WIRED

TNABC

CoinSummit

INSIDE BITCOINS the future of virtual currency

The Montgomery Summit 2015 Presented by MACQUARIE

SERIAL ENTREPRENEUR

- **IGE** (2001-2007) - **Merged with ItemBay**
- **Zam** (2004-2012) - **Sold to TenCent**
- **IMI Exchange** (2004-Present)
- **Xfire 2.0** (2011-Present)
- **Playsino** (2011-Present)
- **GoCoin** (payment processor)
- **Blade Financial** (Bitcoin debit card)
- **Coin Congress** (conference)

Repeat Entrepreneur and Digital Currency Visionary

PARTNERS AND ADVISORY BOARD

ALISON DAVIS*	I	Director: Royal Bank of Scotland, XOOM, Fiserv and First Data
MARY CRANSTON	I	Director: VISA, ex-CEO and Chair of Pillsbury Winthrop
TERRY SCHWAKOPF	I	EVP: Federal Reserve Bank of San Francisco, banking supervision
MICHAEL MCADAM	I	CFO: Union Bank (Mitsubishi UFJ Financial Group)
SIMON MCNAMARA	I	CTO: RBS, ex-CIO of Standard Chartered, BNP and Deutsche Bank
VINNY LINGHAM	I	CEO: Gyft (acquired by First Data)
BOBBY LEE	I	CEO: BTC China
NICCOLO DE MASI	I	CEO: Glu Mobile
STEVE BEAUREGARD	I	CEO: GoCoin
CHRIS PALLOTTA	I	Special Advisor: MIT Media Lab, Partner: Raptor Capital
MATT OCKO	I	Partner: Data Collective
WILL O'BRIEN	I	Co-founder: BitGo
CHARLIE LEE	I	Coinbase, Founder of Litecoin

* Chairman of the Advisory Board

Built a robust team of Advisors and LPs from the Blockchain ecosystem

CRYPTO CURRENCY PARTNERS I, LP

The First Dedicated Bitcoin Venture Fund - 30 Investments, Fully Deployed

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CRYPTO CURRENCY PARTNERS II, LP

Current portfolio - both contributed and new investments

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PIPELINE & PROCESS

600+ Business Plans

CONSUMER
- Exchanges
- Remittance
- Digital Wallets

INFRASTRUCTURE
- Side Chains
- Blockchain Apps
- Mining

ENTERPRISE
- Multi-sig workflow
- Payment Gateways
- Financial Tools

200+ Meetings

- Deep Global Domain Knowledge
- Extensive Networks
- Proprietary Deal Flow
- Primary Investigative Due Diligence
- Exhaustive Management/Industry Interaction

37 Portfolio Companies

- Recruiting
- Business Development
- Capital Introduction
- M&A

HISTORIC VENTURE RETURNS

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ACTIVE BLOCKCHAIN VENTURE INVESTORS

Blockchain Capital has co-invested with these leading VCs

CCP II - 8 CONTRIBUTED INVESTMENTS

	DATE INVESTED	$ AMOUNT	DETAILS
BitGo	June '14	$75,000	Series A preferred
Coinsetter	December '13	$50,000	Converted to Series A at 1.5x
expresscoin	November '13	$25,000	Convert to Series A, $2.5m Cap
GoCoin	October '13	$100,000	Converted to Series A at 4.5x
Kraken	April '14	$70,000	Series A preferred
LedgerX	July '14	$50,000	Series A preferred
BitAccess	September '14	$25,000	Note discounted to Series A preferred
BitNet	October '14	$75,000	Series A Preferred
TOTAL		$470,000	(current value ~ $815,000… 1.7x)

General Partners contributed co-investments at cost to CCP II

CCP II - 12 NEW INVESTMENTS MADE

	DATE INVESTED	$ AMOUNT	DETAILS
PeerNova	September '14	$50,000	Converted to Series A preferred
BlockStream	October'14	$100,000	Series A preferred
ChangeTip	November '14	$250,000	Series A preferred
Bonafide	November'14	$50,000	Note discounted to Series A preferred
BitPesa	December '14	$100,000	Note discounted to Series A preferred
Coinbase	December '14	$200,000	Series C preferred
itBit	January '15	$250,000	Series B preferred
Ripple	March '15	$250,000	Series A preferred
ABRA	July '15	$100,000	Series A preferred
Stem	August '15	$250,000	Note discounted to Series A preferred
Chain	September '15	$250,000	Series C preferred
Gem	September '15	$250,000	Series A preferred
	TOTAL	$2,100,000	

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CCP II - STRATEGY AND MAKE-UP

EXPOSURE	Diversified Sector-specific
FUND POSITION ALLOCATION	**50%** New CCP II investments **30%** Reserves for CCP II follow-on rounds **20%** Option to use CCP I's follow-on rights
INVESTMENT STRATEGY	Leverage our network and industry expertise to find investments that utilize Blockchain technologies and help these portfolio companies disrupt legacy industries.

Access to CCP's early seed deals as well as future deals

CCP II - SUMMARY OF TERMS

FUND TARGET	$10-15M
TERM	6-8 Years
FEE/INCENTIVE	2.5% / 25%
GP CONTRIBUTION	+5% Fund or +$1m
INVESTMENTS	25 ($100k - $500k per deal)
STRUCTURE	4 x 25% capital calls, BTC Accepted

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CCP II - SERVICE PROVIDERS

ADMINISTRATION / CFO	Kranz & Associates
LEGAL	Sidley Austin
TAX / AUDIT	Crawford Pimintel
BANK	Silicon Valley Bank
CUSTODIAN	Merrill Lynch
BTC VAULT	Xapo & BitGo

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USE CASES FOR BLOCKCHAIN TECHNOLOGY

Financial and Records

Bitcoin Private Equities Bonds Public Equities

Shareholder Voting Remittance Crowd-funding

Spending Records Micro-payments Commodities

Trading Records Derivatives Mortgage/loan records

Digital Coupons Servicing records Micro-charity

Legal / Health / Education

Smart Contracts Signatures/identity Degrees

Wills Genome data Trusts Licensing

Medical Records Escrows Delivery records

Arbitration Grades Patents Copyrights

Certifications Academic Credits

Public Records

Land titles Birth certificates Vehicle registries

Business license Business Incorporation/dissolution

Business Ownership records Regulatory records

Criminal records Passports Death certificates

Voter IDs Building permits Health/safety inspections

Non-profit records Court records Gun permits Voting

Commercial / Media

HR Records Supply chain mgmt Accounting records

Business transaction records Software licenses

Trademarks Spam Filters Hotel room keys

Global trade network Loyalty Points Vouchers

Domain names Betting records Movie Tickets

DRM: Music/movie/book license GPS network identity

OPPORTUNITES FOR BLOCKCHAIN ADOPTION

Micro-Transactions
All Global Media Companies

Financial Settlement
Stock, Bonds, Derivatives, etc

Remittance Hot Spots
USA, UAE -> India, Mexico, Philip.

Early-Adopt Millennials
USA, EU, AU

Currency Controlled Markets
Korea, S. Africa, China, India

Unstable Markets
Africa, Venezuela, Argentina

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INDUSTRY GROWTH: 2014 to 2015

Key Bitcoin Adoption Metrics

	Quarterly				Year Ago	
	June-15	March-15	Q2/Q1Δ	Q1/Q4Δ	June-14	Δ
Commerce						
Wallets	9,345,510	8,457,207	11%	14%	5,467,263	2x
Merchants	100,000	88,000	14%	7%	65,640	2x
Merchants' annual revenue ($bn)	187	187	0%	4%	30	6x
ATMs	426	374	14%	9%	126	3x
Unique bitcoin addresses	261,770	203,189	29%	29%	136,152	2x
Industry						
All-time VC investment ($m)	$832	$687	21%	50%	$252	3x
Number of VC-backed startups	113	105	8%	15%	58	2x
Media						
Mainstream media mentions	371	458	-19%	-10%	1035	-64%
Technology						
Network hash rate (billion/second)	351,177,610	346,028,956	1%	11%	104,506,281	3x
Valuation						
Bitcoin market capitalization ($bn)	$3.8	$3.4	11%	-22%	$8.0	-53%

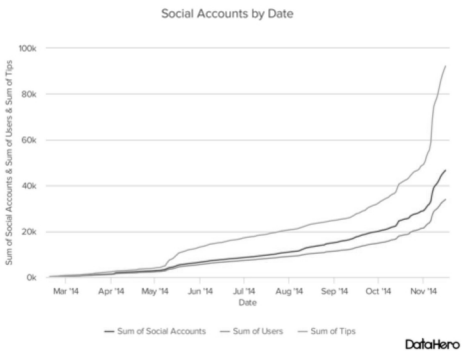
Data sources and notes: CoinDesk, Blockchain.info, BitcoinPulse, Github, Coin ATM Radar. Figures are cumulative from start of records, except unique bitcoin addresses and media mentions, which are figures for the quarter ending that month. Number of VC-backed startups and VC investment unadjusted for closed companies: Melotic, Buttercoin, BitInstant, and TradeHill.

State of Bitcoin Q2 2015 CoinDesk 7

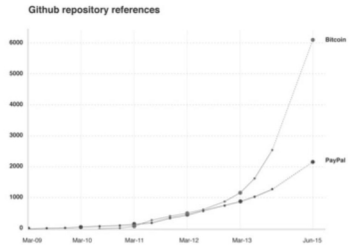
CASE STUDY: ChangeTip

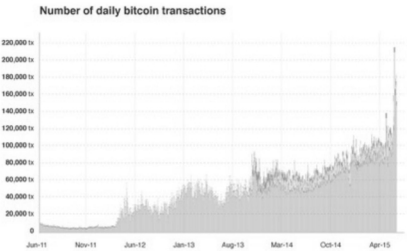
ChangeTip enables a "tipping" feature using Bitcoin on other companies' websites. It has built a Bitcoin micropayment platform that is currently integrated with Twitter, GitHub, Reddit, Google+, Tumblr, and YouTube.

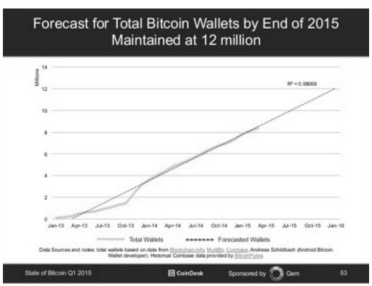
We believe that ChangeTip's micro transaction platform is poised to be the financial equivalent of the "Like" button, and enabling new mechanisms for premium online constant to be monetized.

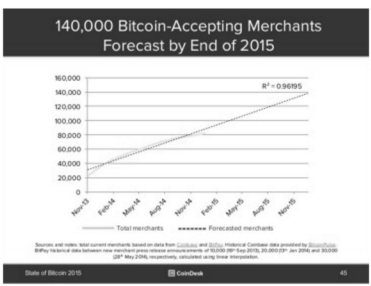


HYPER-GROWTH- 2013 to 2015









SUMMARY

BLOCKCHAIN CAPITAL

FIRST DEDICATED BITCOIN VENTURE FUND

UNPARALLELED ACCESS TO DEAL-FLOW

PROVEN TRACK RECORDS

Building the Future Leaders in the Blockchain Economy

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VOTE STACEY PLASKETT
FOR CONGRESS 2016
UNITED STATES VIRGIN ISLANDS

FIRST TERM ACCOMPLISHMENTS 2015-2016

- Named to the Committees on Agriculture and Oversight and Government Reform
- Named as the Freshman representative on the Democratic Leadership Steering and Policy Committee
- Named by Southern Region as Regional Whip for Democrats
- Named to Leader Nancy Pelosi's Future Forum Group. Made up of a select group of 10 Members of Democratic Conference to engage millennials in political process
- Selected to President Obama's White House Renewable Energy roundtable group
- Led the Virgin Islands' delegation to the First Caribbean Energy Security Summit in DC

Successful Legislative Activity

- Successfully removed the Virgin Islands and small territories from PROMESA (Puerto Rico Oversight Management Economic Security Act), which threatened VI municipal credit and borrowing ability along with self-governance
- Secured VA decision to expand Choice Program eligibility for Virgin Islands resident veterans
- Original Co-Sponsor of legislation to expand the VA choice program eligibility (H.R.572)
- Secured House passage of the Virgin Islands of the United States Centennial Commission Act (H.R.2615)
- Successfully worked to repeal the DC Budget proposal listing USVI and other Caribbean islands as tax havens which would have negatively affected our ability to secure banking and Treasury support
- Led the defeat of an amendment to the transportation authorization bill (Territorial Highway Program: H.R.2353) that would have reduced federal dollars for the Virgin Islands
- Defeated attempt by American Samoa and Northern Mariana to reallocate percentage of funding going to the USVI for other small territories
- Secured Commitment from Army Corp of Engineers for increased personnel and resources for Virgin Islands backlog of permits
- One of a small group of Members of Congress to be involved in the planning of the unprecedented "sit-in" of House Democrats for action to address American gun violence
- Secured Agriculture drought relief assistance for farmers and livestock owners and commitment to keep data on territories for future assistance and to designate St. Croix a primary disaster area due to severe drought
- Honored by global food and poverty groups for being a leading voice on issues affecting food and nutrition security

Major Sponsored Legislation

- Virgin Islands Visa Waiver Act of 2015 (H.R. 2116) — Gives expedited visa process for members of the Caribbean Community (CARICOM) to enter the USVI for sports, entertainment, medical, and recreational purposes.
- Hire-A-Hero Act of 2015 (H.R.2457) — Gives tax credits to small businesses that hire someone in the Reserves or National Guard.
- United States Virgin Islands College Access Act of 2015 (H.R. 4191) — Allows student who are residents of the VI to receive in-state tuition when applying to participating state universities.
- Lobbied Obama Administration to include UVI as a community college for the President's proposal to make 2 years free at community colleges.
- Territorial Economic Growth and Recovery Act of 2016 (H.R.5163) — Introduced to amend the Internal Revenue Code of 1986 to provide for economic recovery in the Virgin Islands and Guam, and for other purposes.
- Territorial Tax Equity and Economic Growth Act (H.R.5038) — Introduced to amend the Internal Revenue Code of 1986 to provide for economic recovery in the territories.
- Co-Sponsored legislation to extend SSI benefits to the U.S. Virgin Islands (H.R.582)
- Visited Dominica immediately after Hurricane Erika and hosted Dominican Ambassador in Congress. Introduced H.Res.453 with numerous co-sponsors for additional Dominican assistance

Field Activities

- Sponsored workshops on STT and STX for small businesses on federal contracting
- Partnered with USDA for workshops (STX and STT) on technical support for Farmers
- Had several town halls on St. Croix, St. Thomas, and St. John.
- Commitment to visit ALL schools in the Virgin Islands, and currently have visited over 15 schools. Will continue to meet with heads of school, teachers AND students.
- Organized and hosted first ever official roundtable discussion between VI Delegate to Congress and Virgin Islands Legislature
- Organized annual "VI Advocacy Day" in Congress, focused on elevating VI issues via local business owners and advocates
- Held meetings with various Regional Directors of agencies to discuss issues/concerns affecting the VI including:
    - HIDTA (High Intensity Drug Trafficking Agency)
    - Customs and Border Protection
    - U.S. Postal Service
    - USPS letter carriers
    - HUD (Housing and Urban Development)
    - VA Regional Hospital in Puerto Rico

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From: Quora Digest [digest-noreply@quora.com]
Sent: 7/7/2019 7:03:04 PM
To: jeevacation@gmail.com
Subject: What is the French paradox?

Jeffrey's Digest

TOP STORIES FOR YOU

What is the French paradox?

Olga Persson, knows French
Written Jun 26

People refer to French paradox when they are talking about the puzzling phenomenon of French people getting away with murder vis-a-vis food and drink. Unapologetic love for...

Read More »

What's the legality of living on a boat (any size) off the coast in the U.S.?

Jeanne Pockel, 28 years full-time blue water sailing/cruising, 50 countries
Written Jun 24

Have you noticed that you don't see many boats anchored off the shore of ocean beaches? And rarely if ever overnight? That boats anchor in harbors, bay, rivers, but not off...

Read More »

If x^2 + 16 = 0, then what is x?

Dave Clark, studied Mathematics at Queens' College, Cambridge
Written Nov 15, 2018

[math]x^2 + 16 = 0[/math]

[math]\therefore x^2 = -16[/math]

[math]\therefore x = \pm \sqrt{-16}[/math]

Negative numbers have no square roots in the real numbers, so if you are looking for real values only then there are no solutions. If we are looking for complex values too ...

Read More »

As a flight attendant, what is the most disrespectful thing a passenger has ever requested from you?

Susan Brown, Flight Attendant
Updated Jan 2

I once had a strange passenger that asked me to go and check the "toilet" for her, before she went in.

I asked her why she wanted me to check the lavatory FOR HER. She tol...

Read More »

People in many countries enjoy bashing the French. Are their reasons the same, or do they vary country to country? What do you think is the source of French-bashing in your country?

Diane Allen, Self-Employed Pharmacy Owner 27 Years and Counting
Written May 3

I find this an interesting question. My sister-in-law was born and raised in France. She has lived in the US 35+ years. Last time she went home to visit her family, she cam...

Read More »

If a car pulls across your driveway and blocks your car in and you need to leave is there any way to move the car without breaking the law?

Erik Pistek, former Detective NYPD Retired
Written Jul 1

Yes. Ask a neighbor if they have a floor jack with wheels. Jack the car up from the center of axle Just enough to get tires off ground. Then push the car from the side fend...

Read More »

Why does Warren Buffett live like a poor person?

John Gill

Updated May 23

1. His house is worth $650,000
2. He flies by private jet
3. His California vacation home is worth $11,000,000
4. He drives a Cadillac...

Read More »

What indeed happens when you drop the soap in jail?

Paul Passmore, Activist in the black community
Written Jun 30

Usually, you have to yell really loudly to one of your friends or bunkmate and tell him to bring you another bar of soap. And that invites everyone within earshot to laugh ...

Read More »

Do you think it's inappropriate for John Oliver to call President Donald Trump an "Uncooperative Toddler"?

James Elefante
Written Jun 24

What's that my mother used to say about "if you can't stand the heat then get out of the kitchen." He we have THE PRESIDENT of the United States giving childish and bullish...

Read More »

What do they say in French at a restaurant when asking the customers "for here or to go?"

Cathelène Dechesne, knows French
Updated Jun 24

Hello! I'm French, and I would love to answer this question for you :)

In France, when ordering a meal at a restaurant, if the waiter/waitress asks a customer "for here or t...

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From: Richard Kahn [redacted]
Sent: 7/8/2018 7:24:05 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Bookstore owner calls police after customer confronted Steve Bannon | TheHill

Importance: High

http://thehill.com/blogs/blog-briefing-room/news/395982-bookstore-owner-called-the-police-after-a-women-called-steve

Bookstore owner calls police after customer confronted Steve Bannon

By Morgan GstalterJuly 07, 2018 - 10:38 PM EDT

A Richmond, Va., bookstore owner said he called the police on Saturday after former White House chief strategist Stephen Bannon was confronted in his store.

Nick Cooke, owner of Black Swan Books, told the Richmond Times-Dispatch that a woman called Bannon a "piece of trash."

The woman then left the store after Cooke said he called 911.

"Steve Bannon was simply standing, looking at books, minding his own business. I asked her to leave, and she wouldn't. And I said, 'I'm going to call the police if you don't,' and I went to call the police and she left," Cooke said. "And that's the end of the story."

Bannon grew up in Richmond, the newspaper noted.

The Richmond Police Department confirmed the call was made but the call was canceled before officers responded.

"We are a bookshop. Bookshops are all about ideas and tolerating different opinions and not about verbally assaulting somebody, which is what was happening," Cooke said.

Sponsored Content

Trump's Supreme Court shortlist

By The Hill

Read More

Bannon joins a growing list of political figures associated with President Trump who have been confronted in public in recent weeks.

Protesters in Kentucky followed Senate Majority Leader Mitch McConnell (R-Ky.) to his car while he was leaving a Louisville restaurant on Saturday, threatening to vote him out of office.

Others, including White House press secretary Sarah Huckabee Sanders and Department of Homeland Security Secretary Kirstjen Nielsen, also have been confronted by protesters for their association with the Trump administration and its policies.

Richard Kahn
HBRK Associates Inc.
575 Lexington Avenue, 4th Floor
New York, NY 10022
[redacted]

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FORM DEF 14A
(Proxy Statement (definitive))

Filed 03/14/19 for the Period Ending 04/23/19

Address	1930 W. RIO SALADO PARKWAY TEMPE, AZ, 85281
Telephone	(480) 719-8809
CIK	0001690820
Symbol	CVNA
SIC Code	5500 - Retail-Auto Dealers and Gasoline Stations
Industry	Auto Vehicles, Parts & Service Retailers
Sector	Consumer Cyclicals
Fiscal Year	12/31

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-12

CARVANA CO.
(Name of registrant as specified in its charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

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(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it is determined):

(4) Proposed maximum aggregate value of transaction:

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

CARVANA

Dear Fellow Stockholders,

We are pleased to invite you to attend the Annual Meeting of Stockholders of Carvana Co.

Date :	Tuesday, April 23, 2019
Time :	8 AM (PDT)
Address :	3419 East University Drive Phoenix, AZ 85034

You can access our proxy materials online at www.proxydocs.com/CVNA. We will mail a notice containing instructions on how to access this proxy statement and our annual report on or about Thursday, March 14, 2019, to all stockholders entitled to vote at the annual meeting. Stockholders who prefer a paper copy of the proxy materials may request one on or before April 12, 2019, by following the instructions provided in the notice we will send.

Your vote is important. Whether or not you plan to attend the annual meeting, we urge you to vote. You may vote by proxy over the internet, by telephone, or by mail by following the instructions on the proxy card. Voting by proxy will ensure your representation at the annual meeting regardless of whether you attend.

Sincerely,

Ernest Garcia III

President, Chief Executive Officer and Chairman

NOTICE OF 2019 ANNUAL MEETING OF STOCKHOLDERS

The 2019 Annual Meeting of Stockholders of CARVANA CO. ("Carvana") will be held at 3419 East University Drive, Phoenix, AZ 85034, on Tuesday, April 23, 2019, at 8:00 AM (PDT) for the following purposes:

1. to elect two nominees identified in the accompanying proxy statement to serve as directors, as recommended by the Compensation and Nominating Committee of the Board of Directors of Carvana;
2. to ratify the appointment of Grant Thornton LLP as Carvana's independent registered public accounting firm for the year ending December 31, 2019;
3. to consider the approval, by an advisory vote, of Carvana's executive compensation (i.e., "say-on-pay" proposal);
4. to recommend, by an advisory vote, the frequency of future advisory votes on executive compensation (i.e., "say-on-pay frequency"); and
5. to transact other business as may properly come before the meeting or any adjournment of the meeting.

Our board of directors has set February 25, 2019, as our record date for this year's meeting. Only stockholders that owned Carvana Co.'s Class A common stock or Class B common stock at the close of business on that day are entitled to notice of our annual meeting and may vote at it or any adjournment of the meeting. A list of stockholders entitled to vote at the meeting will be available for examination by any stockholder for any purpose relevant to the meeting during ordinary business hours for at least ten days prior to April 23, 2019, at 1930 W. Rio Salado Pkwy, Tempe, AZ 85281.

By Order of the Board of Directors

Paul Breaux

General Counsel and Secretary

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COMMONLY ASKED QUESTIONS AND ANSWERS ABOUT THE ANNUAL MEETING

Q: Why did I receive these materials?

The Board of Directors of Carvana Co. is soliciting your proxy to vote at our 2019 Annual Meeting of Stockholders (or at any postponement or adjournment of the meeting). Stockholders who own shares of our common stock (Class A or Class B) as of the record date, February 25, 2019, are entitled to vote at the annual meeting. You should review these proxy materials carefully as they give important information about the items that will be voted on at the annual meeting, as well as other important information about Carvana.

Q: Who will be entitled to vote?

Stockholders who own shares of our common stock as of the record date, February 25, 2019, are entitled to vote at the annual meeting. As of the record date, Carvana had approximately 41,201,324 shares of Class A common stock outstanding and 104,336,303 shares of Class B common stock outstanding. Holders of shares of Class A common stock are entitled to one vote per share of Class A common stock. Ernest Garcia II, Ernest Garcia III, and entities controlled by one or both of them (collectively, the "Garcia Parties") are entitled to ten votes per share of Class B common stock they beneficially own, for so long as the Garcia Parties maintain, in the aggregate, direct or indirect beneficial ownership of at least 25% of the outstanding shares of Class A common stock, determined on an as-exchanged basis assuming that all of the Class A common units ("Class A Units") and Class B common units ("Class B Units," and together with Class A Units, "LLC Units") of Carvana Group, LLC ("Carvana Group") were exchanged for Class A common stock. The Garcia Parties are currently entitled to ten votes per share of Class B common stock they beneficially own. All other holders of Class B common stock are entitled to one vote per share. All holders of Class A common stock and Class B common stock will vote together as a single class except as otherwise required by applicable law. Cumulative voting is not permitted with respect to the election of directors or any other matter to be considered at the annual meeting.

Q: What will I be voting on?

You will be voting on the following matters:

1. to elect two Class II directors to serve on Carvana's board of directors until the 2022 Annual Meeting and until their successors are duly elected and qualified;
2. to ratify the appointment of Grant Thornton LLP as Carvana's independent registered public accounting firm for the year ending December 31, 2019;
3. to consider the approval, by an advisory vote, of Carvana's executive compensation (i.e., "say-on-pay");

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4. to recommend, by an advisory vote, the frequency of future advisory votes on executive compensation (i.e., "say-on-pay frequency"); and
5. to transact other business as may properly come before the meeting or any adjournment of the meeting.

Q: How does the board recommend I vote on these matters?

The board of directors recommends you vote for the following:

1. FOR the election of Gregory Sullivan and Dan Quayle as Class II directors;
2. FOR the ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for the year ending December 31, 2019;
3. FOR the approval, by an advisory vote, of Carvana's executive compensation; and
4. FOR an advisory vote that future advisory votes on executive compensation occur annually.

Q: How do I cast my vote?

Beneficial Stockholders . If you hold your shares through a broker, trustee, or other nominee, you are a beneficial stockholder. To vote your shares, please refer to the materials forwarded to you by your broker, bank, or other nominee for instructions on how to vote the shares you hold as a beneficial stockholder.

Registered Stockholders . If you hold shares in your own name, you are a registered stockholder and may vote by written ballot at the annual meeting or by proxy before the annual meeting in the following ways:

1. online at www.proxypush.com/CVNA;
2. by phone by calling (866) 509-2149; or
3. by signing and returning a proxy card.

Proxies submitted online or by telephone must be received before 8:00 AM (PDT) on April 23, 2019.

Q: Can I access the proxy materials electronically?

Yes. Your notice, proxy card, or voting instruction card will contain instructions on how to view our proxy materials for the annual meeting online and how to instruct us to send our future proxy materials to you electronically by email. Our proxy materials are also available at www.proxypush.com/CVNA and will be available during the voting period starting on March 14, 2019.

Instead of receiving future copies of our proxy statement and annual reports by mail, stockholders of record and most beneficial owners can elect to receive an email that will provide an electronic link to these documents. Your election to receive future proxy materials by email will remain in effect until you revoke it.

Please note that only one notice will be sent to stockholders who are listed at the same address.

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Q: How may I change or revoke my proxy?

Beneficial Stockholders . Beneficial stockholders should contact their broker, trustee, or nominee for instructions on how to change their proxy vote.

Registered Stockholders . Registered stockholders may change a properly executed proxy at any time before its exercise by

1. delivering written notice of revocation to the general counsel and secretary at our principal executive offices at 1930 W. Rio Salado Pkwy, Tempe, AZ 85281;
2. submitting another proxy that is dated later than the original proxy (including a proxy via telephone or internet); or
3. voting in person at the annual meeting.

Q: Who can attend the annual meeting?

Subject to space availability, all common stockholders as of the record date, or their duly appointed proxies, may attend the annual meeting. Since seating is limited, admission to the annual meeting will be on a first-come, first-served basis. Registration will begin at 7:30 AM (PDT). If you attend, please note that you may be asked to present valid photo identification, such as a driver's license or passport.

Please also note that if you are a beneficial stockholder (that is, you hold your shares through a broker, bank or other nominee), you will need to bring a copy of a brokerage statement reflecting your stock ownership as of the record date and check in at the registration desk at the annual meeting.

Cameras, recording devices and other electronic devices will not be permitted at the annual meeting.

Q: What is the voting requirement to approve each of the items, and how are the votes counted?

ITEM 1 – ELECTION OF DIRECTORS . A plurality of the votes cast by the shares of common stock present in person or represented by proxy at the meeting and entitled to vote thereon is required to elect each nominee. This means that the two nominees receiving the highest number of votes at the annual meeting will be elected, even if those votes do not constitute a majority of the votes cast. Abstentions and broker non-votes will not impact the election of the nominees.

ALL OTHER ITEMS . The affirmative vote of a majority of the votes cast by the shares of common stock present in person or represented by proxy at the meeting and entitled to vote thereon is required to approve all other items. Abstentions will be counted as present and entitled to vote on the proposal and will therefore have the effect of a negative vote. We do not expect there to be any broker non-votes with respect to any of the proposals.

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Q: When will the results of the vote be announced?

The preliminary voting results will be announced at the annual meeting. The final voting results will be published in a current report on Form 8-K filed with the SEC within four business days of the annual meeting.

Q: What is the deadline for submitting a stockholder proposal or director nomination for the 2020 Annual Meeting?

Stockholder proposals pursuant to SEC Rule 14a-8 for inclusion in Carvana's proxy statement and form of proxy for Carvana's 2020 Annual Meeting of Stockholders must be received by Carvana at our principal executive offices at 1930 W. Rio Salado Pkwy, Tempe, AZ, 85281, no later than the close of business on November 15, 2019. Stockholders wishing to make a director nomination or bring a proposal, but not include it in Carvana's proxy materials, must provide written notice of their nomination or proposal to the general counsel and secretary at Carvana's principal executive offices no later than the close of business on January 24, 2020, and not earlier than the close of business on December 25, 2019, assuming Carvana does not change the date of the 2020 Annual Meeting of Stockholders by more than 30 days before or after the anniversary of the 2019 Annual Meeting. If so, Carvana will release an updated time frame for stockholder proposals. Any stockholder proposal or director nomination must comply with the other provisions of Carvana's amended and restated bylaws and be submitted in writing to the general counsel and secretary at Carvana's principal executive offices.

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BOARD OF DIRECTORS AND CORPORATE GOVERNANCE

Our business and affairs are managed under the direction of our Board, which is composed of five directors. Our certificate of incorporation provides that the authorized number of directors may be changed only by resolution of our Board. Our certificate also provides that our Board will be divided into three classes of directors, with the classes as nearly equal in number as possible. At each annual meeting of stockholders, a class of directors will be elected for a three-year term to succeed the class whose term is then expiring.

The following table sets forth the director class, name, age as of April 23, 2019, and other information for each member of our board of directors:

NAME	CLASS	AGE	POSITION	DIRECTOR SINCE	CURRENT TERM EXPIRES	EXPIRATION OF TERM FOR WHICH NOMINATED
Gregory Sullivan	II	60	Director	2017	2019	2022
Dan Quayle	II	72	Director	2017	2019	2022
Michael Maroone	III	65	Lead Director	2017	2020	
Ernest Garcia III	I	36	President, CEO and Chairman	2017	2021	
Ira Platt	I	55	Director	2017	2021	

We believe that in order for our Board to effectively guide us to long-term sustainable, dependable performance, it should be composed of individuals with sophistication and experience in the many disciplines that impact our business. To best serve our stockholders, we seek to have a board that, as a whole, is competent in key corporate disciplines, including accounting and financial acumen, business judgment, crisis management, governance, leadership, people management, risk management, social responsibility and reputational issues, and strategy and strategic planning. Additionally, the Board desires to have specific knowledge related to our industry, such as expertise in automotive retail and consumer finance.

The Compensation and Nominating Committee believes that all directors must, at a minimum, meet the criteria set forth in the Board's code of conduct and the corporate governance guidelines, which specify, among other things, that the Compensation and Nominating Committee will consider criteria such as independence, diversity, age, skills, and experience in the context of the needs of the Board. In addressing issues of diversity in particular, the Compensation and Nominating Committee considers a nominee's differences in viewpoint, professional experience, background, education, skill, age, race, gender, and national origin. The Compensation and Nominating Committee believes that diversity of backgrounds and viewpoints is a key attribute for a director nominee. Accordingly, to improve director diversity and best serve our stockholders, the Compensation and Nominating Committee adopted a policy in 2019 to request that any search firm that it engages include women and minority candidates in the initial list from which the committee selects director candidates. The Compensation and Nominating Committee also will consider a combination of factors for each director, including whether the nominee possesses:

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- the ability to represent all stockholders without a conflict of interest;
- the ability to work in and promote a productive environment;
- sufficient time and willingness to fulfill the substantial duties and responsibilities of a director;
- the high level of character and integrity that we expect;
- broad professional and leadership experience and skills necessary to effectively respond to the complex issues encountered by a national, publicly traded company; and
- the ability to apply sound and independent business judgment.

The Compensation and Nominating Committee has determined that all of our directors meet the criteria and qualifications set forth in the code of conduct for the Board of Directors, the corporate governance guidelines and the criteria set forth above for director nominees. Moreover, each director possesses the following critical personal qualities and attributes that we believe are essential for the proper functioning of the Board to allow it to fulfill its duties for our stockholders: accountability, ethical leadership, governance, integrity, risk management, and sound business judgment. In addition, our directors have the mature confidence to assess and challenge the way things are done and recommend alternative solutions, a keen awareness of our business and the social realities of the environment in which we operate, the independence and high-performance standards necessary to fulfill the Board's oversight function, and the humility, professional maturity, and style to interface openly and constructively with other directors. Finally, the director biographies below include a non-exclusive list of other key experiences and qualifications that further qualify the individual to serve on the Board. These collective qualities, skills, experiences, and attributes are essential to our Board's ability to exercise its oversight function for Carvana and its stockholders and to guide the long-term sustainable, dependable performance of our business.

Subject to any earlier resignation or removal in accordance with the terms of our certificate and bylaws, our Class II directors will serve until this our second annual meeting of stockholders, our Class III directors will serve until the third annual meeting of stockholders, and our Class I directors will serve until our fourth annual meeting of stockholders. In addition, our certificate provides that our directors may be removed with or without cause by the affirmative vote of at least a majority of the voting power of our outstanding shares of stock entitled to vote thereon, voting together as a single class, for so long as the Garcia Parties are entitled to ten votes for each share of Class B common stock they hold. If the Garcia Parties are no longer entitled to ten votes for each share of Class B common stock they hold, then our directors may be removed only for cause upon the affirmative vote of at least 66 $^{2}/_{3}$ % of the voting power of our outstanding shares of stock entitled to vote thereon.

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The Compensation and Nominating Committee will consider stockholder nominations for membership on the Board. For the 2020 Annual Meeting, nominations may be submitted to Carvana Co., 1930 W. Rio Salado Pkwy, Tempe, AZ 85281, Attn: Secretary, who will forward them to the Chairman of the Compensation and Nominating Committee. Recommendations must be in writing and we must receive the recommendation no later than the close of business on January 24, 2020, and not earlier than the close of business on December 25, 2019. Recommendations must also include certain other requirements specified in our bylaws. The committee will apply the same criteria to the evaluation of those candidates as it applies to other director candidates.

When filling a vacancy on the Board, the Compensation and Nominating Committee identifies the desired skills and experience of a new director and nominates individuals who it believes can strengthen the Board's capabilities and further diversify the collective experience represented by the then-current directors. The Compensation and Nominating Committee may engage third parties to assist in the search and provide recommendations. Pursuant to a previously informal policy formally adopted in 2019, any search firm that the committee engages is requested to include women and minority candidates in the initial list from which the committee selects director candidates. Also, directors are generally asked to recommend candidates for the position. The candidates would be evaluated based on the process outlined in the Corporate Governance Guidelines and the Compensation and Nominating Committee charter, and the same process would be used for all candidates, including candidates recommended by stockholders.

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ITEM 1—ELECTION OF DIRECTORS

Our Board recommends that the nominees below be elected as members of the Board at the annual meeting to serve for a three-year term expiring at the 2022 Annual Meeting.

NAME	AGE	DIRECTOR SINCE	POSITION
Gregory Sullivan	60	2017	Director
Dan Quayle	72	2017	Director

Each nominee was recommended for re-election by the Compensation and Nominating Committee for consideration by the Board and proposal to our stockholders. If, before the annual meeting, any nominee becomes unable to serve, or chooses not to serve, the Board may (i) nominate a substitute (ii) allow the vacancy to remain until the Board identifies an appropriate candidate or (iii) reduce the size of the board to eliminate the vacancy. If the Board chooses to nominate a substitute nominee, the persons named as proxies on the proxy card will vote for that substitute nominee.

The Board of Directors recommends that you vote "FOR" each of the director nominees.

DIRECTOR NOMINEES

Dan Quayle has served on our Board since the completion of our initial public offering ("IPO") in 2017. Mr. Quayle has served the United States Federal Government in various capacities: congressman, senator, and as the 44th vice president of the United States of America from 1989 to 1993. Since 1999, Mr. Quayle has been with Cerberus Capital, a New York private investment firm. He has served as chairman of Cerberus Global Investments since 2001. Mr. Quayle earned a B.A. degree in political science from DePauw University and a J.D. from the Indiana University Robert H. McKinney School of Law. We believe Mr. Quayle is qualified to continue to serve on our Board because of his experience as the chairman of Cerberus Global Investments, LLC, as well as his extensive experience in the areas of government, foreign relations, and private investment.

Gregory Sullivan has served on our Board since the completion of our IPO. Mr. Sullivan is the co-founder and chief executive officer of AFAR Media, a travel media company he co-founded in 2007. From 1995 to 2007, Mr. Sullivan served the DriveTime Automotive Group, Inc. ("DriveTime") in various capacities, including as president from 1995 to 2004, chief executive officer from 1999 to 2004, and vice chairman from 2004 to 2007. Mr. Sullivan earned a B.B.A. degree in finance from the University of Notre Dame and a J.D. from the University of Virginia School of Law. We believe that Mr. Sullivan is qualified to continue to serve on our Board because of his senior management experience in the automotive and media industries.

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CONTINUING DIRECTORS

Ernest Garcia III co-founded Carvana and has served as our president and chief executive officer since our inception in 2012. Mr. Garcia is also Chairman of the Carvana Co. Board. Prior to founding Carvana, Mr. Garcia held various roles at DriveTime from January 2007 to January 2013. From January 2007 to December 2008, he served as a financial strategist. He was a managing director of corporate finance from December 2008 to November 2009. From November 2009 until January 2013, he served as a vice president and treasurer and director of quantitative analytics. As director of quantitative analytics, Mr. Garcia was responsible for the firm's ongoing development of consumer credit scoring models, and its utilization of those tools in retail-vehicle-sales deal structuring and vehicle-price optimization. Prior to DriveTime, Mr. Garcia was an associate in the Principal Transactions Group at RBS Greenwich Capital from 2005 to 2006, where he focused on consumer-credit-based investments. Mr. Garcia holds a B.S. in management science and engineering from Stanford University. We believe that Mr. Garcia is qualified to continue to serve on our Board because of his extensive knowledge of our business and strategy, as well as his experience in the automotive retail industry and leadership role with us.

Ira Platt has served on our Board since the completion of our IPO in 2017. Mr. Platt has been the president of Georgiana Ventures, LLC, a firm that provides equity and debt capital to specialty finance companies, acquires portfolios of consumer finance receivables and offers consulting services to the specialty finance industry, since its inception in 2009. From May 2009 to December 2013, Mr. Platt served as the president of 221 Capital Partners, LLC, a firm that provides advisory services. From 2009 to 2011, Mr. Platt was the portfolio manager for the Rosemont TALF Opportunity Fund, a partnership investing in asset-backed securities. In addition, Mr. Platt was a managing director and head of the Principal & Distressed Capital Business for RBS Greenwich Capital, the domestic fixed-income banking unit of the Royal Bank of Scotland Group, from 1997 to 2009. Mr. Platt was an executive vice president of the Aegis Consumer Funding Group, a publicly traded non-prime automotive finance company, from 1991 to 1997. Mr. Platt earned a B.A. degree in 1985 from Emory University and an M.B.A. from The Fuqua School of Business at Duke University. Mr. Platt served on DriveTime's board of directors from February 2014 until April 2017. We believe that Mr. Platt will continue to be a valuable member of our Board because of his service on DriveTime's board and his extensive experience in consumer finance and the automotive retail industry.

Michael Maroone has served on our Board since the completion of our IPO. Mr. Maroone is currently the CEO of Maroone U.S.A. LLC. From July 2005 to April 2015, Mr. Maroone served on the board of AutoNation, Inc., an automotive retailer and provider of new and used vehicles and related services. From August 1999 until his retirement in February 2015, Mr. Maroone also served as president and chief operating officer of AutoNation, Inc. Prior to joining AutoNation, Inc., Mr. Maroone was president and chief executive officer of the Maroone Automotive Group, a privately held automotive retail group, from 1977 to 1997. Mr. Maroone currently serves on three other boards: as a member of the board of Cox Automotive, Inc., a privately held combination of global automotive wholesale and services businesses including automotive auctions, financial services, media, and software; as chairman of the

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board of Cleveland Clinic Florida, a non-profit, multispecialty academic hospital; and as a member of the board of the Cleveland Clinic. Mr. Maroone previously served on the Cleveland Clinic Board of Trustees and was co-chairman of the Florida Leadership Board of the Cleveland Clinic. He holds a B.S. degree in small business management from the University of Colorado Boulder. Mr. Maroone was selected to serve on our Board because of his advisory experience and his extensive experience in the automotive retail industry

INDEPENDENCE STATUS

The listing standards of the New York Stock Exchange require that, subject to specified exceptions, each member of a listed company's audit committee, and compensation committee, and nominating committee be independent and that audit committee members also satisfy independence criteria set forth in Rule 10A-3 under the Exchange Act.

Our Board has determined that each of our non-employee directors, including our director nominees Dan Quayle and Gregory Sullivan, meets the requirements to be an independent director. In making this determination, our Board considered the relationships that each non-employee director has with Carvana and all other facts and circumstances that our Board deemed relevant in determining their independence, including beneficial ownership of our Class A common stock.

CONTROLLED COMPANY STATUS

For purposes of the corporate governance rules of the NYSE, we are a "controlled company." Controlled companies under those rules are companies of which more than 50% of the voting power for the election of directors is held by an individual, a group, or another company. The Garcia Parties beneficially own more than 50% of the combined voting power of Carvana Co. Accordingly, we expect to be eligible for, but do not currently intend to take advantage of, certain exemptions from the corporate governance requirements of the NYSE. Specifically, as a "controlled company," we would not be required to have:

- a majority of independent directors,
- a nominating and corporate governance committee composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities,
- a compensation committee composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities, or
- an annual performance evaluation of the nominating and governance and compensation committees.

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In the event we choose to rely on some or all of these exemptions in the future, you would not have the same protections afforded to stockholders of companies that are subject to all of the applicable corporate governance rules of the NYSE.

BOARD MEETINGS AND COMMITTEES

During the year ended December 31, 2018, our Board held five meetings, our Audit Committee held nine meetings, and our Compensation and Nominating Committee held four meetings. Directors are expected to attend the annual meeting of stockholders and all or substantially all of the Board meetings and meetings of committees on which they serve, and to spend the time needed and meet as frequently as necessary to properly discharge their responsibilities. Each director attended last year's annual meeting, 100% of the meetings of the Board during such director's tenure, and 100% of the meetings held by the committees of the Board on which the director served.

Our Board has an Audit Committee and a Compensation and Nominating Committee. The composition, duties and responsibilities of these committees are as set forth below. In the future, our board may establish other committees, as it deems appropriate, to assist it with its responsibilities.

BOARD MEMBER	AUDIT COMMITTEE	COMPENSATION AND NOMINATING COMMITTEE
Ira Platt	•	•
Gregory Sullivan	•	•
Dan Quayle		•
Michael Maroone	•	

AUDIT COMMITTEE

The Audit Committee is responsible for, among other matters,

- appointing, compensating, retaining, evaluating, terminating, and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm their independence from management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;

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- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls, and compliance with legal and regulatory requirements;
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls, or auditing matters;
- reviewing and approving related party transactions; and
- overseeing our enterprise risk management program.

Our Board has affirmatively determined that Mr. Platt, Mr. Maroone, and Mr. Sullivan meet the definition of "independent director" for purposes of serving on an Audit Committee under Rule 10A-3 of the Exchange Act and the NYSE rules. In addition, our Board has determined that Mr. Platt qualifies as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K. The written charter for our Audit Committee is available at our corporate website at investors.carvana.com/corporate-governance/governance-documents.

COMPENSATION AND NOMINATING COMMITTEE

The Compensation and Nominating Committee is responsible for, among other matters,

- reviewing key employee compensation goals, policies, plans, and programs;
- reviewing and providing recommendations to the Board regarding the compensation of our directors, chief executive officer, and other executive officers;
- reviewing and approving employment agreements and other similar arrangements between us and our executive officers;
- administering stock plans and other incentive compensation plans;
- identifying individuals qualified to become members of our Board, consistent with criteria approved by our Board;
- overseeing the organization of our Board to discharge the Board's duties and responsibilities properly and efficiently;
- identifying best practices and recommending corporate governance principles; and
- developing and recommending to our Board a set of corporate governance guidelines and principles applicable to us.

The Board has adopted a written charter for the Compensation and Nominating Committee, which is available on our corporate website at investors.carvana.com/corporate-governance/governance-documents. Each member of our Compensation and Nominating Committee is an independent director as defined by NYSE rules.

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BOARD LEADERSHIP STRUCTURE

The following section describes our board leadership structure, the reasons why the structure is in place at this time, the roles of various positions, and related key governance practices. The mix of experienced independent and management directors that make up our Board, along with the independent role of our lead director and our independent board-committee composition, benefits Carvana and its stockholders.

INDEPENDENCE; BOARD MIX

Our Board has an effective mix of independent and management directors. It is composed of four independent directors and our current chairman and chief executive officer, Ernest Garcia III.

LEAD DIRECTOR

The Board believes that it is beneficial to Carvana and its stockholders to designate one of the directors as a lead director who is elected by a majority of the Board. The lead director serves a variety of roles, including reviewing and approving Board schedules to confirm the appropriate board and committee topics are reviewed and sufficient time is allocated to each; liaising between our chairman and chief executive officer and non-management directors when necessary and appropriate (that said, each director has direct and regular access to the chairman and chief executive officer) and calling an executive session of independent directors at any time consistent with the bylaws and certificate of incorporation. Michael Maroone, an independent director and member of our Audit Committee, is currently our lead director. Mr. Maroone is an effective lead director for Carvana due to, among other things, his independence, his board leadership experience with AutoNation, Inc., his strong strategic and financial acumen, his commitment to ethics, his extensive knowledge of the automotive retail environment, and his deep understanding of Carvana and its business.

CHAIRMAN / CEO

With respect to the roles of chairman and CEO, the corporate governance guidelines provide that the roles may be separated or combined, and the Board will exercise its discretion in combining or separating these positions as it deems appropriate in light of prevailing circumstances. Mr. Garcia has been our chairman and CEO since our IPO. The Board believes that combining the roles of chairman and CEO, together with the separate, independent role of our lead director, is currently the most effective leadership structure because Mr. Garcia has extensive knowledge and experience in a variety of relevant areas acquired through his professional and other experiences, including automotive retail, e-commerce, consumer finance and strategic planning. This knowledge and experience give Mr. Garcia the insight necessary to combine the responsibilities of strategic development and execution along with management of day-to-day operations.

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SELF-EVALUATION

Our Compensation and Nominating Committee conducts an annual performance evaluation to determine whether the Board, its committees, and the directors are functioning effectively. This includes survey materials as well as conversations between each director and the lead director. The evaluation focuses on the Board's and the committees' contributions to Carvana and has an enhanced focus on areas in which the Board or management believes that the Board could improve.

As part of the annual Board self-evaluation, the Board evaluates whether the current leadership structure continues to be appropriate for Carvana and its stockholders. Our corporate governance guidelines provide the flexibility for our Board to modify our leadership structure in the future as appropriate.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE.

Section 16(a) of the Exchange Act requires our directors, executive officers and greater-than-ten-percent stockholders to file initial reports of ownership and reports of changes in ownership of any of our securities with the SEC and us. We believe that during the 2018 fiscal year, all of our directors, executive officers and greater-than-ten-percent stockholders complied with the requirements of Section 16(a).

RISK OVERSIGHT

The Board, as a whole and through the Audit Committee, oversees our risk management program, which is designed to identify, evaluate, and respond to our high priority risks and opportunities. The risk management program facilitates constructive dialog at the senior management and board level to proactively realize opportunities and manage risks. Our Audit Committee is primarily responsible for overseeing our risk management processes on behalf of the full board. Our management, including our executive officers, is primarily responsible for managing the risks associated with the operation and business of our company and provides regular updates to the Audit Committee and annual updates to the full board on the risk management program and reports on the identified high priority risks and opportunities.

CODE OF ETHICS AND CONDUCT

We have adopted a code of business conduct and ethics that applies to all of our employees, officers, and directors, including those officers responsible for financial reporting. Our code of business conduct and ethics is available on our website at investors.carvana.com/corporate-governance/governance-documents. We intend to disclose any amendments to the code or waivers of its requirements on our website.

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COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

No interlocking relationships exist between the members of our Board and the board or compensation committee of any other company.

COMMUNICATIONS BY STOCKHOLDERS AND OTHER INTERESTED PARTIES WITH THE BOARD OF DIRECTORS

Stockholders and other interested parties may contact an individual director, the lead director, the Board as a group, or a specified board committee or group, including the non-management directors as a group, by sending regular mail to

Carvana Co.
1930 W. Rio Salado Pkwy
Tempe, AZ 85281
ATTN: Board of Directors

or by email at leaddirector@carvana.com.

Each communication should specify which director or directors the communication is addressed to, as well as the general topic of the communication. Carvana will receive the communications and process them before forwarding them to the addressee. Carvana may also refer communications to other departments within Carvana. Carvana generally will not forward to the directors a communication that is primarily commercial in nature, relates to an improper or irrelevant topic, or requests general information regarding Carvana.

DIRECTOR COMPENSATION

Prior to our IPO, none of our directors received compensation as a director from us. We have designed our non-employee director compensation program to achieve the following objectives:

- align directors' interests with the long-term interests of our shareholders;
- attract and retain outstanding director candidates with diverse backgrounds and experiences; and
- recognize the substantial time commitment required to serve as a Carvana director.

The Compensation and Nominating Committee reviews the Company's director compensation program annually. Independent directors may not receive, directly or indirectly, any consulting, advisory or other compensatory fees from us. Members of the Board who are employees of Carvana do not receive compensation for their service on the Board. The following table presents summary information regarding the total compensation awarded to, earned by, and paid to our non-employee directors for the year ended December 31, 2018:

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NAME	FEES EARNED OR PAID IN CASH ($)	OPTION AWARDS ($)	ALL OTHER COMPENSATION ($)	TOTAL ($)
Ira Platt	100,000	—	—	100,000
Gregory Sullivan	95,000	—	—	95,000
Dan Quayle	70,000	—	—	70,000
Michael Maroone	90,000	—	—	90,000

NON-EMPLOYEE DIRECTOR COMPENSATION STRUCTURE

As of March 7, 2019, we compensate our non-employee directors according to the following structure:

DESCRIPTION	AMOUNT
Annual retainer	$60,000
Board meeting fees	$2,000 per each board meeting in excess of six board meetings in any calendar year that a non-employee director attends in person
Additional retainer for committee members	$10,000 per committee
Additional retainer for chair of committee	$20,000 for Audit Committee; $15,000 for Compensation and Nominating Committee
Additional retainer for lead director	$20,000

Additionally, upon the completion of our IPO, each current non-employee director received a one-time award of options to purchase an aggregate of approximately 30,927 shares of our Class A common stock, vesting over three years, with an exercise price of $15. All non-employee directors are also reimbursed for their reasonable expenses to attend meetings of our Board and related committees and otherwise attend to our business.

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EXECUTIVE OFFICERS

Below is a list of the names, ages, positions, and a brief account of the business experience of the individuals who serve as executive officers of Carvana Co. as of April 23, 2019:

NAME	AGE	POSITION
Ernest Garcia III	36	President, Chief Executive Officer and Chairman
Mark Jenkins	40	Chief Financial Officer
Benjamin Huston	36	Chief Operating Officer
Ryan Keeton	41	Chief Brand Officer
Daniel Gill	36	Chief Product Officer
Paul Breaux	35	Vice President, General Counsel and Secretary

Ernest Garcia III is the president and chief executive officer of Carvana and the chairman of our Board. His biography can be found above under "Board of Directors and Corporate Governance – Continuing Directors."

Mark Jenkins has served as our chief financial officer since July 2014. Prior to joining Carvana, Mr. Jenkins was a professor in the finance department at the Wharton School of the University of Pennsylvania from 2009 to 2014, where his teaching and research focused on consumer and corporate credit markets. While at Wharton, Mr. Jenkins was responsible for teaching courses in the undergraduate, MBA, and executive education programs on corporate restructuring, corporate credit, and leveraged finance. Prior to his time at Wharton, Mr. Jenkins worked at the Brattle Group from 2001 to 2004, an economic consulting firm, where he focused on corporate valuation and demand forecasting in technology markets. Mr. Jenkins received a Ph.D. in economics from Stanford University and a B.S.E. from Duke University in mathematics and civil engineering.

Benjamin Huston co-founded Carvana and has served as our chief operating officer since our inception in 2012. In 2011, prior to joining Carvana, Mr. Huston co-founded Looterang, a card-linking platform that enabled personalized deals to be automatically administered through consumer credit or debit cards. Mr. Huston was chief executive officer of Looterang from 2011-2012. From 2008 to 2011, Mr. Huston served as an associate at Latham and Watkins, a full-service global law firm, where he focused on regulatory affairs. Mr. Huston holds a J.D. from Harvard Law School and a B.A. in American studies from Stanford University.

Ryan Keeton co-founded Carvana and has served as our chief brand officer since our inception in 2012. Prior to joining Carvana, Mr. Keeton was a principal at the Montero Group, a strategic consultancy firm, from 2010 to 2012, where he advised global public and private companies on strategic and business initiatives. From 2008 to 2010, Mr. Keeton served as director of strategic marketing for George P. Johnson, a global marketing agency. Mr. Keeton holds a B.A. in English and American literature and language from Harvard University.

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Daniel Gill has served as our chief product officer since March 2015, overseeing all technology functions, as well as strategic partnerships for the business. Prior to joining Carvana, Mr. Gill spent his career in both enterprise software and consumer internet businesses. He co-founded and served as CEO of Huddler from 2007 until the company's acquisition by Wikia in May of 2014. Mr. Gill holds a degree in biology from Stanford University.

Paul Breaux has served as our general counsel since August 2015. Prior to joining Carvana, Mr. Breaux practiced law at the Houston, Texas office of the firm Andrews Kurth LLP (now Hunton Andrews Kurth LLP) from 2008 to 2015. While at Andrews Kurth, Mr. Breaux's representative experience encompassed a broad range of general business transactions matters. Mr. Breaux holds a J.D. from Harvard Law School, a B.A. in Plan II Honors from The University of Texas at Austin, and a B.B.A. in finance from The University of Texas at Austin.

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COMPENSATION DISCUSSION AND ANALYSIS

This Compensation Discussion and Analysis ("CD&A") describes our executive compensation objectives and design, our compensation-setting process, our executive compensation program components, and the decisions made in 2018 with respect to our chief executive officer and our four other most highly compensated executive officers for the year ended December 31, 2018, who have been designated as our "named executive officers" under Item 404 of Regulation S-K ("NEOs"):

NAMED EXECUTIVE OFFICER	POSITION
Ernest Garcia III	Chief Executive Officer
Mark Jenkins	Chief Financial Officer
Benjamin Huston	Chief Operating Officer
Ryan Keeton	Chief Brand Officer
Daniel Gill	Chief Product Officer

This CD&A may contain statements regarding future individual and company performance targets and goals. These targets and goals should not be understood to be statements of management's expectations or estimates of results or other guidance. We specifically caution investors not to apply these statements to other contexts.

EXECUTIVE SUMMARY

COMPANY PERFORMANCE HIGHLIGHTS

2018 was a successful year for Carvana. We had another year of triple-digit growth in unit retails sold and revenue, while making significant progress in our gross profit per unit and EBITDA margin. Our growth has few historical precedents and makes us one of the fastest-growing technology, consumer, or retail companies at our scale.

The highlights of our 2018 performance include:

- 113% increase in retail units sold, from 44,252 to 94,108;
- 128% revenue growth, from $859 million to $1.96 billion;

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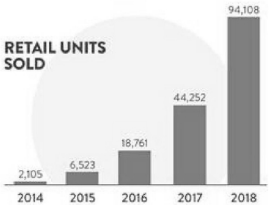
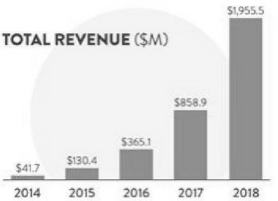
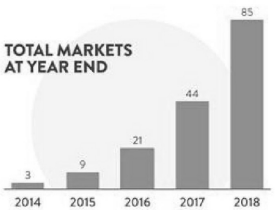
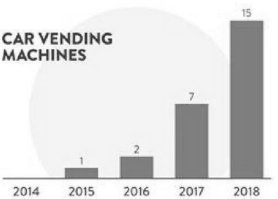




- 41 new markets, bringing our total from 44 to 85;
- 8 additional car vending machines, bringing our total from 7 to 15;

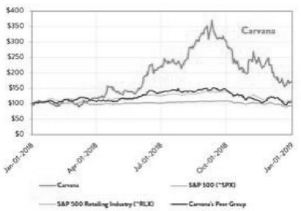




- a $551 increase in gross profit per unit (incl. gift) from $1,539 to $2,090, and a $594 increase in gross profit per unit ex-Gift, from $1,539 to $2,133;
- an increase in net loss margin (incl. Gift) from (19.1%) to (13.0%);
- an increase in EBITDA margin ex-Gift, from (16.9%) to (9.9%); and

Note that gross profit per unit ex-gift and EBITDA margin ex-gift are non-GAAP measures. A description of these measures and a reconciliation of these measures to the nearest comparable GAAP measure can be found in the annex of this proxy statement .

- a one-year total shareholder return of 71.1%, significantly outperforming our peer group companies (see "Competitiveness of our Compensation Program" below) as an index as well as the S&P 500 and S&P 500 Retailing Indices.



KEY COMPENSATION DESIGN AND DECISIONS TO LINK PAY AND PERFORMANCE

Underlying our executive compensation program is a strong belief in promoting a pay-for-performance culture. We accomplish this by linking a significant portion of the compensation of our executive officers, including our named executive officers, to our performance. In addition, the Compensation and Nomination Committee seeks to set challenging threshold and target performance levels that reflect our rapid growth trajectory and business plans rather than goals based on prior years' achievements. For each of the metrics used in our performance-based compensation plans, payouts are earned based upon outstanding performance as measured against pre-established financial objectives.

CORPORATE GOVERNANCE HIGHLIGHTS REGARDING EXECUTIVE COMPENSATION

We endeavor to maintain sound executive compensation policies and practices, including compensation-related corporate governance standards, consistent with our executive compensation philosophy. The following summarizes our executive compensation and related governance policies and practices:

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WHAT WE DO	WHAT WE DO NOT DO
✓ A significant portion of compensation is "at risk" and tied to long-term company performance	× No discretionary or guaranteed incentives payments
✓ Annual incentive plan metrics are solely based on company performance; awards are determined based on pre-established targets	× No new or legacy exercise-tax gross-up provisions
✓ Market-based executive compensation levels are reviewed by Compensation and Nominating Committee annually	× No option repricing without stockholder consent
✓ Performance-measured incentive awards are subject to a compensation recoupment policy	
✓ Executives are prohibited from hedging	
✓ An independent compensation consultant is retained to evaluate our executive compensation and make recommendations	

We believe that we have designed executive compensation plans that effectively support our strategic and financial goals, create a culture of teamwork, and are directly tied to the performance of the company and shareholder outcomes. We will continue to utilize rigorous governance processes to monitor and evaluate the compensation programs as well as implement best practices in compensation governance. We welcome shareholder feedback on our programs.

COMPENSATION OBJECTIVES AND PRINCIPLES

Carvana seeks to create and maintain a culture of teamwork and high performance. Our executive compensation programs are one of the tools we utilize to accomplish this objective. Philosophically, we aim to treat our executives fairly when considering:

- the complexity of their jobs,
- the market for their executive talent,
- their individual performance,
- the financial and strategic performance of the company, and
- the need to retain the executives.

Within that framework, it is critical that we meet our objectives to:

- attract and retain the best executive talent to support our growth,
- align the interests of our executives with those of our shareholders, and
- provide incentives that are linked directly to our long- and short-term strategy.

We set very challenging goals as our incentive compensation metrics and we expect that our executives will in aggregate be paid approximately at the median for achieving those goals through the plans outlined in this CD&A. As evidenced by our track record of growth and strategic progress, our approach to executive compensation has been effective.

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COMPENSATION SETTING PROCESS

ROLE OF COMPENSATION AND NOMINATING COMMITTEE AND CHIEF EXECUTIVE OFFICER IN SETTING EXECUTIVE COMPENSATION

The Compensation and Nominating Committee has responsibility for overseeing the design, development, and implementation of the compensation program for our chief executive officer and other NEOs. The committee evaluates the performance of our chief executive officer and the performance of the other executive officers. Our chief executive officer assists the committee in evaluating the performance of our other executive officers, including the named executive officers other than the chief executive officer. Our chief executive officer does not participate in portions of committee meetings or meetings of the Board when his compensation is discussed and determined, and has requested that his total compensation be set significantly below the market median due to his significant ownership interest in our company

Based on these assessments, the members of the Compensation and Nominating Committee, each of whom is an independent director, make the final compensation decisions for the NEOs other than the CEO, and make recommendations to the Board for the CEO's compensation. The Board makes the final decision for the CEO's compensation.

INDEPENDENT COMPENSATION ADVISOR

Our Compensation and Nominating Committee believes that independent advice is important in developing Carvana's executive compensation programs. Since September 2017, the committee has engaged Korn Ferry as its independent compensation consultant to advise on executive compensation matters. All work performed by the independent compensation consultant regarding our executive compensation program is tasked and overseen directly by the committee. Our management provides information and analyses to the committee at the committee's direction.

In addition to advising on our executive compensation program, Korn Ferry, at the request of and in service to the committee, provided certain other compensation advisory services for 2018 compensation, including assistance with establishing a compensation peer group, benchmarking aggregate broad-based equity usage (including run-rate and total dilution), benchmarking director compensation, benchmarking non-executive employee compensation in certain job families within our company, and developing the narrative disclosure in this Compensation Discussion and Analysis. Our Compensation and Nominating Committee paid Korn Ferry $103,000 for their 2018 services.

Korn Ferry does not provide any other material services to Carvana Co. The committee has assessed the independence of Korn Ferry pursuant to the NYSE rules and concluded that Korn Ferry's work for the committee did not raise any conflicts of interest.

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COMPETITIVENESS OF OUR COMPENSATION PROGRAM

Our executive compensation program is designed so that the sum of base pay plus total short- and long-term compensation is competitive with market practices. Market practices—or benchmarks—are based on peer-group data and compensation survey data.

The past year, 2018, was our first year of developing a compensation peer group. Many of our direct industry competitors are either privately held companies or are larger than us in revenue size, although very few have our growth trajectory. The Compensation and Nominating Committee, with the assistance of its compensation consultant, Korn Ferry, reviewed and selected potential peer companies based on revenue size, industry focus, growth rates, complexity of operations, customer base, and market for talent. With the assistance of its compensation consultant, the committee approved the following compensation peer group in order to determine market pay levels and pay practices for fiscal year 2018:

- 1-800-Flowers.com, Inc.
- America's Car-Mart, Inc.
- Cars.com Inc.
- Etsy, Inc.
- Grubhub, Inc.
- MarineMax, Inc.
- Monro, Inc.
- Overstock.com, Inc.
- RH
- Sleep Number Corporation
- TrueCar, Inc.
- U.S. Auto Parts Network, Inc.
- Wayfair Inc.
- Zillow Group, Inc.

Going forward, the Compensation and Nominating Committee expects to review our compensation peer group on an annual basis for continued appropriateness, considering changes in both our size and business and the businesses of the companies in the peer group.

The committee also uses compensation survey data in its evaluation of executive pay for the NEOs. Survey data provides insight into positions that may not generally be reported in proxy statements and information about the compensation of executives of non-public companies. To assist the committee in evaluating fiscal year 2018 compensation levels, the committee reviewed both peer-group proxy data and information from survey databases, utilizing appropriate subsets based on the size of the company.

COMPENSATION COMPONENTS

In accordance with our overall compensation philosophy and program, executives are provided with a mix of base salary, short-term incentives, long-term incentives and employee benefits. Our compensation philosophy places a significant portion of the potential total compensation for each NEO "at risk" such that compensation will vary based on performance of Carvana. Variable compensation is a component of compensation for most of our employees, but a higher proportion of our NEOs' compensation is at risk than that of our general employee population. As shown in the pay mix chart below, our compensation program is designed to be highly performance-based with approximately 80% of each of our NEO's compensation tied to our financial performance and stock price performance.

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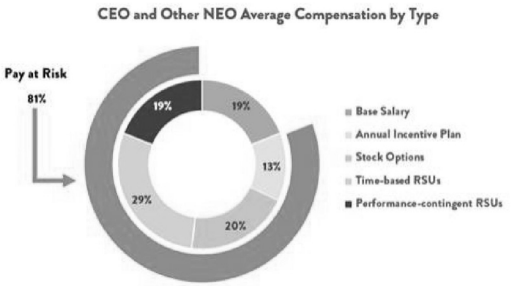

The following table describes the material elements of compensation and the objectives of each element:

PROGRAM	DESCRIPTION	OBJECTIVES
ANNUAL COMPENSATION:		
Base Salary	• Ongoing cash compensation based on executive officer's role, responsibilities, competitive market positioning, and individual performance.	• Attract and retain qualified key managerial talent. • Recognize sustained individual performance.
Annual Incentive Plan	• Annual cash incentive with target award amounts for each executive officer. • Actual cash awards may be higher or lower than target, based on the company's financial performance.	• Attract and retain qualified key managerial talent. • Encourage and reward achievement of annual performance objectives.
LONG-TERM COMPENSATION:		
Long-Term Incentive Program	• A long-term incentive program using a combination of time-vested and performance-based awards.	• Focus executives on long-term company performance and long-term financial and strategic success. • Retention. • Align employee and stockholder interests via performance goals and stock ownership.

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BASE SALARY

The base salaries for the named executive officers are reviewed annually by the Compensation and Nominating Committee. Individual salaries are determined based upon a combination of factors, including the scope of responsibilities, individual performance and experience, our company's performance, an individual's potential for making contributions to future company performance, and competitive pay practices. The committee considers all these factors in determining base salary increases and does not assign a specific weighting to any individual factor.

In February 2018, the Compensation and Nominating Committee reviewed the base salaries of our executive officers, including our named executive officers, taking into consideration the factors described above. Following this review, the committee determined to maintain the base salary of our CEO at its 2017 level and to increase the base salaries of the other four named executive officers to maintain the competitiveness of this compensation element. All of the NEOs' 2018 base salaries were approximately at or below the market median as determined by the compensation consultant.

Ernest Garcia III, our chief executive officer, had a base salary of $400,000 for both 2017 and 2018, with no increase. Mark Jenkins, our chief financial officer, had a 2017 base salary of $350,000 and a 2018 base salary of $375,000, an increase of 7.1%. Benjamin Huston, our chief operating officer, had a 2017 base salary of $350,000 and a 2018 base salary of $375,000, an increase of 7.1%. Ryan Keeton, our chief brand officer, had a 2017 base salary of $315,000 and a 2018 base salary of $330,000, an increase of 4.8%. Daniel Gill, our chief product officer, had a 2017 base salary of $315,000 and a 2018 base salary of $330,000, an increase of 4.8%.

2018 ANNUAL INCENTIVE PLAN

Our annual incentive plan was designed to align our executive officers' incentives with our company goals and, therefore, to be aligned with the interests of our shareholders. The Compensation and Nominating Committee approves which executives are eligible to participate (other than the CEO) and the level of potential awards, identifies appropriate performance measures, and determines the financial targets of each measure. The CEO makes recommendations as to these matters, but the Compensation and Nominating Committee makes all decisions with respect to the implementation of the annual incentive plan. For the CEO's annual incentive plan, the Compensation and Nominating Committee makes a recommendation, with the Board making the final decision. In establishing performance goals, the committee and the Board as a whole review industry and market conditions, alignment of the goals with our strategy, projected general economic conditions, and both our past and forecasted performance levels.

Target Bonuses and Payout Ranges

For the 2018 annual incentive plan, the committee established a target bonus at 66.7% of base salary for each of the NEOs, with a payout range of 0%–133% of base salary. Utilizing the same bonus target for all the NEOs promotes a culture of teamwork among the senior executives and encourages their entrepreneurial spirit. As a result, the CEO's target 2018 total cash, including both base salary and target annual incentive plan amount, is below the market 25 th percentile of our compensation peer group.

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The resulting payout range for Mr. Garcia, our chief executive officer, is $0–$530,667, with a target of $266,667. For both Mr. Jenkins, our chief financial officer, and Mr. Huston, our chief operating officer, the payout range is $0–$497,500, with a target of $250,000. For both Mr. Keeton, our chief brand officer, and Mr. Gill, our chief product officer, the payout range is $0–$437,800, with a target bonus of $220,000.

Performance Metrics and Goals

The performance period for the annual incentive is our fiscal year. The committee selected retail units sold, gross profit per unit ex-Gift, and EBITDA margin ex-Gift as the performance metrics for our 2018 annual incentive plan because these are the primary metrics we use in evaluating our own performance when communicating our financial results to our investors.

The committee believes that these performance measures help focus the executives on growing retail units sold and revenue, increasing total gross profit per unit, and demonstrating operating leverage. The detailed definition of each measure and rationale of selection are provided below:

PERFORMANCE METRICS USED IN THE 2018 AIP	WEIGHT	DEFINITION	RATIONALE OF SELECTION
Retail Units Sold	40%	The number of vehicles sold to customers in a given period, net of returns under our seven-day return policy.	We view retail units sold as a key measure of our growth for several reasons. First, retail units sold is the primary driver of our revenues and, indirectly, gross profit, since retail unit sales enable multiple complementary revenue streams, including financing, VSCs, GAP waiver coverage, and trade-ins. Second, growth in retail units sold increases the base of available customers for referrals and repeat sales. Third, growth in retail units sold is an indicator of our ability to successfully scale our logistics, fulfillment, and customer service operations.
Gross Profit per Unit ex-Gift	40%	The gross profit before compensation expense related to the 100k Milestone Gift (as hereinafter defined) is included in cost of sales, divided by retail units sold in that period.	Total gross profit per unit ex-Gift is driven by sales of used vehicles, each of which generates additional revenue sources including wholesale sales of vehicles we acquire from customers as trade-ins, gains on the sales of loans originated to finance the vehicle, revenue from GAP waiver coverage, and commissions on sales of VSCs. We believe total gross profit per unit ex-Gift is a key measure of our growth and long-term profitability.

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EBITDA Margin ex-Gift	20%	Net loss before interest expense, income tax expense, depreciation and amortization expense, and the compensation expense related to the 100k Milestone Gift, as a percentage of total revenues.	We believe that EBITDA Margin ex-Gift is an important measure of the leverage in our business and a useful measure to us and to our investors because it focuses specifically on operational performance.

At the beginning of 2018, the committee established financial performance goals that were challenging and reflective of Carvana's fiscal 2018 operating plan, economic and market conditions, and forecasts at the time the performance goals were established. The target performance goal of each metric is significantly above fiscal 2017's actual results: over 92,000 retail units sold, a 108% increase over fiscal year 2017's retail units sold of 44,252; over $2,100 for gross profit per unit ex-Gift, a $561 increase over fiscal year 2017's gross profit per unit ex-Gift of $1,539; and EBITDA margin ex-Gift of less than (7.2)%, a 9.7 percentage point improvement over fiscal year 2017's EBTIDA margin ex-Gift of (16.9)%.

Total Payouts

Based on the committee's evaluation of our 2018 actual performance against the annual incentive plan goals, 88% of the target annual bonuses were paid out, amounting to 59% of the NEOs' respective base salaries. The annual incentive bonus received by each of the NEOs is included in the "Non-Equity Performance Incentive Plan Compensation" column in the 2018 Summary Compensation Table in this proxy statement.

Each of the annual incentive metrics provided a payout range of 0%–199% as a percent of the target. For Retail Units Sold, weighted 40% of the total, the target was over 92,000, and our actual performance was 94,108, resulting in a payout of 118% of the target payout. For gross profit per unit ex-Gift, weighted 40% of the total, the target was over $2,100 and our actual performance was $2,133, resulting in a payout of 103% of the target. For EBITDA Margin ex-Gift, weighted 20% of the total, our target was less than (7.2)% and our actual performance was (9.9)%, resulting in no payout. Aggregating each of the respective payouts, weighted accordingly, resulted in a total payout of 88% of target. Applying the payout of 88% of target to each of our NEOs respective target bonuses, Mr. Garcia achieved a $235,733 payout amount; Messrs. Jenkins and Huston achieved a payout of $221,000 each, and Messrs. Keeton and Gill achieved a payout of $194,480 each.

LONG-TERM INCENTIVE PROGRAM

The Compensation and Nominating Committee believes that stock-based performance compensation is essential to align the interests of Carvana's management and its shareholders in enhancing the long-term value of our equity and to encourage executives to remain with the company. Among the varied types of equity awards the committee is authorized to use under the equity plan, stock options are the ones that the committee has determined are preferable for use with NEOs, because their

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value is more leveraged to future value appreciation and depends upon a future increase in the value of our common stock. The committee also has determined that restricted stock unit grants to NEOs should be used for the purposes of retention or recognition of outstanding performance in part because restricted stock units are less volatile than stock options.

2018 Annual Grant

For fiscal 2018, the Compensation and Nominating Committee determined to award an equal blend of time-based stock options and restricted stock units to provide a mix composed of awards whose value depends upon a future increase in the value of the common stock (time-based stock options) and awards that serve primarily as a retention tool (time-based restricted stock units).

For the 2018 annual grant, the committee targeted a grant value equal to the amount of each executive's base salary. The committee initially targeted the annual grant based on a 10-day average stock price as of April 2, 2018 ($21.61). Based on that price, Mr. Garcia would have received 15,988 options and 9,255 RSUs; Messrs. Jenkins and Huston would have received 14,989 options and 8,677 RSUs; and Messrs. Keeton and Gill would have received 13,190 options and 7,635 RSUs. However, the grants were not awarded until mid-July when the stock price had more than doubled ($44.21). To compensate the executives for the disadvantage of receiving stock options with a much higher exercise price, the Committee determined to grant additional RSUs. The grant value of the additional RSUs is equal to one-half of the in-the-money value difference between the options granted based on the March stock price and the options granted based on the July stock price, resulting in a total of 13,987 RSUs granted to Mr. Garcia, 13,113 to Messrs. Jenkins and Huston each, and 11,540 to Messrs. Keeton and Gill each.

2018 Special Performance-Contingent Grant

For fiscal 2018, the Compensation and Nominating Committee and the Board also granted a one-time special performance-contingent RSU award for driving exceptional company performance to achieve an important milestone in the development of the business. The RSUs were granted on April 30, 2018, to the NEOs other than the CEO; the CEO received his award on May 1, 2018. Mr. Garcia was granted 14,572 RSUs ($393,298 grant value), Messrs. Jenkins and Huston 13,662 RSUs ($358,081 grant value), and Messrs. Keeton and Gill 12,022 RSUs ($315,097 grant value). All of these grants will vest 100% on the date of the first periodic report filed where positive quarterly EBITDA is reported. None of the RSUs were vested as of the end of 2018.

2018 100k Milestone Gift

On September 10, 2018, we announced a commitment by our chief executive officer, Ernest Garcia III ("Mr. Garcia"), to contribute 165 shares of Class A common stock to us from his personal shareholdings for every one of our then-existing employees, including the NEOs, upon their satisfying certain employment tenure requirements. In connection with these contributions, we have made corresponding grants of 165 restricted stock units under our 2017 Omnibus Incentive Plan to each employee who has satisfied the requirements and we intend to make grants to the remaining then-existing employees as they satisfy the requirements (the "100k Milestone Gift" or "Gift"). Messrs. Jenkins, Huston, Keeton, and Gill all received the grant in 2018, which had a grant date fair value of $10,562.

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PERQUISITES AND BENEFITS

Currently, we do not view perquisites or other personal benefits as a significant component of our executive compensation program. Accordingly, we did not provide perquisites to our executive officers in 2018, including our named executive officers, except that each of the NEOs, along with certain other employees, can use one of the company inventory vehicles (which generally will be replaced every three years); each, along with many of our employees, may use a company-provided cellular phone; and each, along with all of our employees, may participate in our 401(k) match benefit which is based on salary.

We do not expect that any future perquisites or other personal benefits will be a significant aspect of our executive compensation program. All future practices with respect to perquisites or other personal benefits will be approved and subject to periodic review by the Compensation and Nominating Committee.

TERMINATION, SEVERANCE AND CHANGE IN CONTROL BENEFITS

We do not have employment or severance agreements with our executives.

In the event of a change in control of Carvana Group, all outstanding unvested Class B Unit awards held by participants in the Carvana Group equity incentive plan, whose employment has not previously terminated, will accelerate in full, subject to certain escrow demand rights held by a purchaser of control of Carvana Group.

If an executive is terminated involuntarily without cause within twenty-four months following a change in control as defined by our 2018 equity award agreements, all outstanding vested stock options and time-based RSUs of that executive will become fully exercisable or vested. An executive whose employment is terminated because of death or disability will receive one year from the time of termination to exercise any then-vested options instead of the usual 90 days, but not past the expiration date of the options. If a person's employment is terminated for disability, and that person later dies within a year, the legal representative of the person's estate may exercise the options within one year of the date of death, though not past the expiration date of the options.

If a change in control occurs before the performance-contingent RSUs are vested, outstanding shares will vest in a proportionate number based on the company's progress toward positive EBITDA, starting from the EBITDA loss baseline as of the end of the calendar quarter immediately preceding the award (-$41.5 million) to the EBITDA as of the end of the calendar quarter immediately preceding the date of the closing of the change in control.

Except for these arrangements, none of our named executive officers have entered into any plans, arrangements or agreements with Carvana providing for payments upon termination of employment or change in control of Carvana, other than payments generally available to all salaried employees that do not discriminate in scope, terms, or operation in favor of the executive officers of Carvana.

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COMPENSATION-RELATED POLICIES

COMPENSATION RECOVERY ("CLAWBACK") POLICY

In 2018, the Compensation and Nominating Committee approved the adoption of a "clawback" policy, which would provide for the clawback or recoupment of any compensation granted, earned, or vested that is tied to performance metrics, in the event of an accounting restatement resulting from material noncompliance with certain financial reporting requirements that reveals that such performance (or level of performance) was not achieved.

POLICY REGARDING HEDGING AND PLEDGING OF COMPANY STOCK

Carvana's insider trading policy prohibits all employees from buying or selling Carvana securities while aware of material nonpublic information and prohibits the disclosure of material nonpublic information to others who then trade in our securities. As part of this policy, certain other Carvana-securities-related transactions by directors, officers and other employees are also prohibited or subject to specific notice and pre-approval requirements. The policy is premised on the belief that even in those circumstances where the proposed transaction may not constitute a violation of law or applicable regulations, it is nonetheless inappropriate for any director, officer, or other employee to engage in short-term or speculative transactions in our securities which may be viewed as reducing their incentive to improve our performance or inconsistent with the objectives of our stockholders in general. Therefore, it is our policy that directors, officers, and other employees may not engage in any transactions involving our securities which constitute short sales, puts, calls, or other similar derivative securities. The policy also prohibits certain other transactions, including hedging or monetization transactions—e.g., zero-cost collars, forward sale contracts, and arrangements pledging company securities as collateral for a loan (without adequate assurance of other available assets to satisfy the loan).

COMPENSATION AND RISK

We believe that our compensation programs create appropriate incentives to drive sustained, long-term increases in shareholder value. These programs have been designed and administered in a manner that discourages undue risk-taking by employees. Relevant features of these programs include:

- Focus on weighting compensation toward four-year and greater vesting schedules of equity awards;

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- individual executive pay generally targeted at median level against comparable executive roles at an appropriate set of peer companies, except the chief executive officer, for whom we target significantly below median level due to his significant ownership interest in us;
- robust clawback policies permitting the recoupment of past incentive pay from executive officers in the event of certain kinds of misconduct, and forfeiture of incentive awards in the event the executive engages in various types of conduct deemed detrimental to Carvana's interests, including theft or fraud against Carvana and engaging in competition with Carvana;
- no employment agreements with executive officers;
- the use of retail units sold, gross profit per unit ex-Gift and EBITDA margin ex-Gift as performance metrics, which incents employees to increase earnings and manage net assets efficiently;
- restrictions on trading in Carvana Class A common stock to reduce insider trading compliance risk, as well as prohibitions on pledging and hedging Carvana capital stock.

In light of these features, we conclude that the risks arising from our executive and employee compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

TAX AND ACCOUNTING IMPLICATIONS

Carvana considers the tax and accounting aspects of the elements of compensation we offer in determining the most effective method for compensating our executives. This includes, but is not limited to, Section 162(m) of the Internal Revenue Code and the regulations thereunder. Section 162(m) generally limits the tax deduction available to public companies for annual compensation paid to the chief executive officer and certain other named executive officers in excess of $1 million.

As a result of 2017 tax legislation, compensation paid in a fiscal year in excess of $1 million to, or on behalf of, an individual who is a "covered employee" is not expected to be deductible under Section 162(m) of the Internal Revenue Code, unless such compensation qualifies for transition relief (relating to written binding contracts in effect on November 2, 2017, which were not subsequently materially modified). Therefore, certain compensation paid under our existing equity plans and certain of our long-term equity awards originally designed with the intent that such amounts qualify as "performance-based" compensation may not be deductible in the future. Although the committee may consider the effect that Section 162(m) and the potential lack of deduction for amounts paid in excess of the deduction limit may have on Carvana, the committee continues to retain flexibility to make compensation decisions, in the exercise of its business judgment, that are based on factors that it determines to be appropriate (as determined by the committee in its sole discretion) to enable Carvana to continue to attract, retain, reward, and motivate its highly-qualified executives. This flexibility may include amending or modifying the design elements of our historical compensation programs.

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COMPENSATION AND NOMINATING COMMITTEE REPORT

The Compensation and Nominating Committee has reviewed and discussed the foregoing Compensation Discussion and Analysis with management. Based on this review and discussion, the Committee recommended to the Carvana, Co. Board of Directors that the Compensation Discussion and Analysis be included in this proxy statement and incorporated by reference into Carvana Co.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

Respectfully submitted by:

Gregory Sullivan
Ira Platt
Dan Quayle

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COMPENSATION TABLES

SUMMARY COMPENSATION TABLE

The following table presents summary information regarding the total compensation awarded to, earned by, and paid to our named executive officers for the past three fiscal years.

NAME AND PRINCIPAL POSITION	YEAR	SALARY ($)	STOCK AWARDS ($) (1)	OPTION AWARDS ($)	NON-EQUITY INCENTIVE PLAN COMPENSATION ($) (2)	ALL OTHER COMPENSATION ($) (3)	TOTAL ($)
Ernest Garcia III	2018	400,000	1,011,664	428,329	235,733	—	2,075,726
Chief Executive Officer	2017	400,000	—	—	—	16,149	416,149
	2016	400,000	—	—	—	54,008	454,008
Mark Jenkins	2018	375,000	948,368	401,566	221,000	21,980	1,967,914
Chief Financial Officer	2017	350,000	1,408,000	—	—	12,441	1,770,441
	2016	347,923	57,200	—	—	12,294	417,417
Benjamin Huston	2018	375,000	948,368	401,566	221,000	19,903	1,965,837
Chief Operating Officer	2017	350,000	1,408,000	—	—	24,034	1,782,034
	2016	347,923	57,200	—	—	19,370	424,493
Ryan Keeton	2018	330,000	835,842	353,369	194,480	20,042	1,733,733
Chief Brand Officer	2017	315,000	528,000	—	—	21,688	864,688
	2016	315,000	17,600	—	—	19,050	351,650
Daniel Gill	2018	330,000	835,842	353,369	194,480	13,157	1,726,848
Chief Product Officer	2017	315,000	528,000	—	—	17,451	860,451
	2016	315,000	17,600	—	—	11,250	343,850

(1) The amounts reported in the Stock Awards column represent the grant date fair value of the restricted stock units and Class B Units (as hereinafter defined) granted to the named executive officers during the years presented as computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718.

(2) The amounts reported in the "Non-Equity Incentive Plan Compensation" column represent the amounts paid out under the 2018 annual incentive plan, as described above under "Compensation Discussion and Analysis."

(3) Included in "All Other Compensation" for 2016, 2017, and 2018 were the following items:

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NAME	YEAR	401(K) PLAN COMPANY MATCH(i)	NON-BUSINESS AIRCRAFT USAGE(ii)	INCREMENTAL COST OF COMPANY CAR(iii)	CELLPHONE EXPENSE(iv)	TOTAL
Ernest Garcia III	2018(v)	—	—	—	—	—
	2017	—	12,782	—	3,367	16,149
	2016	—	34,349	16,460	3,199	54,008
Mark Jenkins	2018	3,115	—	18,500	365	21,980
	2017	—	—	11,538	903	12,441
	2016	—	—	12,294	—	12,294
Benjamin Huston	2018	4,489	—	14,750	664	19,903
	2017	4,200	—	18,896	938	24,034
	2016	4,200	—	11,399	3,771	19,370
Ryan Keeton	2018	6,589	—	12,750	703	20,042
	2017	6,300	—	12,750	2,638	21,688
	2016	6,300	—	12,750	—	19,050
Daniel Gill	2018	1,523	—	11,250	384	13,157
	2017	—	—	11,250	386	17,451
	2016	—	—	11,250	—	11,250

(i) Represents discretionary matching contributions under our 401(k) Plan

(ii) The 2016 and 2017 amounts for Mr. Garcia is the incremental cost to Carvana of flights relating to a personal event on the private aircraft operated by Bridgecrest Credit Company, f/k/a DT Credit Company, LLC ("Bridgecrest"), an affiliate of DriveTime, and leased by Carvana. See "Certain Relationships and Related Party Transactions – Relationship with DriveTime – Aircraft Time Sharing Agreement." The incremental cost to Carvana of aircraft used under the aircraft time sharing agreement for a non-business flight is calculated by multiplying the aircraft's per-mile variable operating cost by a flight's total mileage, which includes the mileage of an empty return flight. Variable operating costs include: (1) landing, parking, passenger ground transportation, crew travel, and flight planning services expenses; (2) supplies, catering, and crew traveling expenses; (3) aircraft fuel and oil expenses; (4) maintenance, parts, and external labor (inspections and repairs); and (5) any customs, foreign permit, and similar fees. Fixed costs that do not vary based upon usage are not included in the calculation of direct operating cost. On certain occasions, a named executive officer or a named executive officer's spouse or other family member may fly on the corporate aircraft as additional passengers. No additional direct operating cost is incurred in such situations under the foregoing methodology because the costs would not be incremental. Carvana does not pay its named executive officers any amounts in respect of taxes (so-called gross-up payments) on income imputed to them for non-business aircraft usage.

(iii) The incremental cost of the company car to us has been calculated based on the depreciation value of the vehicle.

(iv) Represents the cost of company-paid cell phone service.

(v) Mr. Garcia's "All Other Compensation" for 2018 was less than $10,000.

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GRANTS OF PLAN-BASED AWAR DS

NAME	GRANT DATE	ESTIMATED FUTURE PAYOUTS UNDER NON-EQUITY INCENTIVE PLAN AWARDS (1)			ESTIMATED FUTURE PAYOUTS UNDER EQUITY INCENTIVE PLAN AWARDS (2)			ALL OTHER STOCK AWARDS: NUMBER OF SHARES OF STOCK OR UNITS (#)	ALL OTHER OPTION AWARDS: NUMBER OF SECURITIES UNDERLYING OPTIONS (#)	EXERCISE OR BASE PRICE OF OPTION AWARDS ($/SH)	GRANT DATE FAI VALUE OF STOCK AN OPTION AWARDS (
		THRESHOLD ($)	TARGET ($)	MAXIMUM ($)	THRESHOLD (#)	TARGET (#)	MAXIMUM (#)				
Ernest Garcia III	4/30/2018	0	266,667	530,667	—	—	—	—	—	—	$ —
	4/30/2018	—	—	—	0	14,572	14,572	—	—	—	$ 393,29
	7/28/2018	—	—	—	—	—	—	13,987	—	—	$ 618,36
	7/28/2018	—	—	—	—	—	—	—	15,988	$ 44.21	$ 428,32
Mark Jenkins	4/30/2018	0	250,000	497,500	—	—	—	—	—	—	$ —
	4/30/2018	—	—	—	0	13,662	13,662	—	—	—	$ 358,08
	7/28/2018	—	—	—	—	—	—	13,113	—	—	$ 579,72
	7/28/2018	—	—	—	—	—	—	—	14,989	$ 44.21	$ 401,56
	9/13/2018(4)	—	—	—	—	—	—	165	—	—	$ 10,56
Benjamin Huston	4/30/2018	0	250,000	497,500	—	—	—	—	—	—	$ —
	4/30/2018	—	—	—	0	13,662	13,662	—	—	—	$ 358,08
	7/28/2018	—	—	—	—	—	—	13,113	—	—	$ 579,72
	7/28/2018	—	—	—	—	—	—	—	14,989	$ 44.21	$ 401,56
	9/13/2018(4)	—	—	—	—	—	—	165	—	—	$ 10,56
Ryan Keeton	4/30/2018	0	220,000	437,800	—	—	—	—	—	—	$ —
	4/30/2018	—	—	—	0	12,022	12,022	—	—	—	$ 315,09
	7/28/2018	—	—	—	—	—	—	11,540	—	—	$ 510,18
	7/28/2018	—	—	—	—	—	—	—	13,190	$ 44.21	$ 353,36
	9/13/2018(4)	—	—	—	—	—	—	165	—	—	$ 10,56
Daniel Gill	4/30/2018	0	220,000	437,800	—	—	—	—	—	—	$ —
	4/30/2018	—	—	—	0	12,022	12,022	—	—	—	$ 315,09
	7/28/2018	—	—	—	—	—	—	11,540	—	—	$ 510,18
	7/28/2018	—	—	—	—	—	—	—	13,190	$ 44.21	$ 353,36
	9/13/2018(4)	—	—	—	—	—	—	165	—	—	$ 10,56

(1) The amounts in these columns represent the threshold, target, and maximum payouts for the 2018 annual incentive plan, as described above under "Compensation Discussion and Analysis." Actual payouts are reflected in the "Summary Compensation Table."

(2) The amounts in these columns represent the number of shares that would be issued upon vesting of the RSUs granted under the 2018 special performance-contingent grant upon achievement of the EBITDA performance target, as described above under "Compensation Discussion and Analysis."

(3) The amounts reported in this column represent the grant date fair value of the options and RSUs granted to the named executive officers as computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718.

(4) These grants represent the amount awarded under the 100k Milestone Gift, which was given to all of our employees who were employed as of September 10, 2018, and who met certain employment-tenure requirements. See "Compensation Discussion and Analysis – 2018 100k Milestone Gift" for more information.

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OUTSTANDING EQUITY AWARDS AT 2018 FISCAL YEAR END

	OPTION AWARDS				EQUITY AWARDS			
NAME	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS (#) EXERCISABLE	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS (#) UNEXERCISABLE	OPTION EXERCISE PRICE ($)	OPTION EXPIRATION DATE	NUMBER OF SHARES OR UNITS OF STOCK THAT HAVE NOT VESTED (#)	MARKET VALUE OF SHARES OR UNITS OF STOCK THAT HAVE NOT VESTED ($) (1)	EQUITY INCENTIVE PLAN AWARDS: NUMBER OF UNEARNED SHARES, UNITS OR OTHER RIGHTS THAT HAVE NOT VESTED (#)	EQUITY INCENTIVE PLAN AWARD MARKET OR PAYOUT VALUE OF UNEARNED SHARES, UNIT OR OTHER RIGHTS THAT HAVE NOT VESTED ($) (1
Ernest Garcia III	—	15,988(8)	44.21	7/28/2028	13,987(9)	457,515	14,572(10)	476,6
Mark Jenkins:	—	14,989(8)	44.21	7/28/2028	13,113(9)	428,926	13,662(10)	446,8
Class B Units (2)	—	—	—	—	116,667	3,052,942	—	—
Class B Units (3)	—	—	—	—	50,000	1,064,500	—	—
Class B Units (4)	—	—	—	—	15,000	319,350	—	—
Class B Units (5)	—	—	—	—	41,667	848,198	—	—
Class B Units (6)	—	—	—	—	126,667	1,794,618	—	—
Benjamin Huston:	—	14,989(8)	44.21	7/28/2028	13,113(9)	428,926	13,662(10)	446,8
Class B Units (3)	—	—	—	—	50,000	1,064,500	—	—
Class B Units (4)	—	—	—	—	15,000	319,350	—	—
Class B Units (5)	—	—	—	—	41,667	848,198	—	—
Class B Units (6)	—	—	—	—	126,667	1,794,618	—	—
Ryan Keeton:		13,190(8)	44.21	7/28/2028	11,540(9)	377,473	12,022(10)	393,2
Class B Units (3)	—	—	—	—	25,000	532,250	—	—
Class B Units (4)	—	—	—	—	7,500	159,675	—	—
Class B Units (5)	—	—	—	—	10,417	212,048	—	—
Class B Units (6)	—	—	—	—	47,500	672,980	—	—
Daniel Gill:	—	13,190(8)	44.21	7/28/2028	11,540(9)	377,473	12,022(10)	393,2
Class B Units (7)	—	—	—	—	200,000	5,233,600	—	—
Class B Units (4)	—	—	—	—	10,667	227,093	—	—
Class B Units (5)	—	—	—	—	10,417	212,048	—	—
Class B Units (6)	—	—	—	—	47,500	672,980	—	—

(1) Amounts were determined based on the closing price of Carvana Co.'s Class A common stock on December 31, 2018, of $32.71 and the applicable participation thresholds of our B1 Units (as defined below), B2 Units (as defined below), B3 Units (as defined below) and B4 Units (as defined below). These values may not reflect the value actually realized by the named executive officers upon vesting.

(2) These Class B Units (the "B1 Units") were granted on March 24, 2015, with a participation threshold of $0.00; 200,000 of which vested on July 1, 2015, and 16,667 of which vest on the first of each month beginning on August 1, 2015.

(3) These Class B Units (the "B2 Units") were granted on March 24, 2015, with a participation threshold of $4.878; 20% vested on March 1, 2016, and the remaining amount vests in 48 equal monthly installments on the first of each month thereafter.

(4) These B2 Units were granted on January 29, 2016, with a participation threshold of $4.878; 20% vested on March 1, 2016, and the remaining amount vests in 48 equal monthly installments on the first of each month thereafter.

(5) These Class B Units (the "B3 Units") were granted on October 21, 2016, with a participation threshold of $5.8114; 20% vested on January 1, 2017, and the remaining amount vests in 48 equal monthly installments on the first of each month thereafter.

(6) These Class B Units (the "B4 Units") were granted on April 27, 2017, with a participation threshold of $12.000; 20% vest on February 1, 2018, and the remaining amount vests in 48 equal monthly installments on the first of each month thereafter.

(7) These B1 Units were granted on March 24, 2015, with a participation threshold of $0.00; 20% vested on March 1, 2016, and the remaining amount vests in 48 equal monthly installments on the first of each month thereafter.

(8) These options vest 25% on April 1, 2019, and the remaining amount vests in 36 equal monthly installments on the first of each month thereafter.

(9) These RSUs vest 25% on April 1, 2019, and the remaining amount vests in 36 equal monthly installments on the first of each month thereafter.

(10) These performance-contingent RSUs vest on the date Carvana files a periodic report (i.e., Form 10-Q or Form 10-K) with the SEC reflecting positive EBITDA for a calendar quarter.

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OPTION EXERCISES AND STOCK VESTED

	OPTION AWARDS		STOCK AWARDS (1)	
NAME	NUMBER OF SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED ON EXERCISE ($)	NUMBER OF SHARES ACQUIRED ON VESTING (#)	VALUE REALIZED ON VESTING ($)
Ernest Garcia III	—	—	—	—
Mark Jenkins	—	—	226,384	8,197,217
Benjamin Huston	—	—	226,384	8,197,217
Ryan Keeton	—	—	107,624	3,894,768
Daniel Gill	—	—	144,152	5,186,740

(1) Amounts include restricted stock units and Class B Units. The number of shares and values were determined based on the closing price of Carvana Co.'s Class A common stock on each vesting date and, in the case of Class B Units, the applicable participation thresholds of our B1 Units, B2 Units, B3 Units, and B4 Units (all as defined above in the "Outstanding Equity Awards at 2018 Fiscal Year End" table).

POTENTIAL PAYMENTS UPON A CHANGE OF CONTROL

As described in "Compensation Discussion and Analysis – Termination, Severance, and Change of Control Benefits" above, we do not have an employment or severance agreement with any of our named executives; however, our NEOs would be entitled to accelerated vesting of certain equity awards under the following conditions, with values listed as of December 31, 2018:

NAME	CHANGE OF CONTROL ($) (1)	INVOLUNTARY TERMINATION WITHOUT CAUSE WITHIN 24 MONTHS OF A CHANGE OF CONTROL ($) (2)
Ernest Garcia III	—	457,515
Mark Jenkins:	7,079,609	428,926
Benjamin Huston:	4,026,667	428,926
Ryan Keeton:	1,576,953	377,473
Daniel Gill:	6,345,721	377,473

(1) Amounts in this column represent the market value as of December 31, 2018, on a fully exchanged basis, of the Class B Units, described above under "Outstanding Equity Awards at 2018 Fiscal Year End," that would vest upon a change of control of Carvana Group, as long as the executive's employment had not been previously terminated and subject to certain escrow demand rights held by a purchaser of control of Carvana Group. The performance-contingent RSUs would also vest on a change of control, but in proportion to the progress made toward positive EBITDA. None of the performance-contingent restricted stock units would be subject to accelerated vesting as of December 31, 2018, because EBITDA as of that date had not progressed beyond the baseline.

(2) Amounts in this column represent the market value as of December 31, 2018, of all outstanding time-based RSUs, which would become fully vested if the executive is involuntarily terminated without cause within 24 months of a change of control of Carvana Co. In that event, outstanding unvested stock options would also become fully vested and exercisable, but as of December 31, 2018, the price of Carvana's Class A common stock did not exceed the strike price of those unvested options.

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CEO PAY RATIO

The 2018 annual total compensation of our median-compensated employee other than Mr. Garcia was $36,204. We identified our median-compensated employee by calculating the annual salary of all our employees as of December 31, 2018, annualized for those who joined Carvana during the year and who were not seasonal or temporary employees. Mr. Garcia's 2018 annual total compensation was $2,075,726, as disclosed in the "Summary Compensation Table" above. The ratio of our median-compensated employee to Mr. Garcia is 1-to-57.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

POLICIES FOR APPROVAL OF RELATED PARTY TRANSACTIONS

We have adopted a written policy with respect to the review, approval, and ratification of related party transactions. Under the policy, our Audit Committee is responsible for reviewing and approving related party transactions. In the course of its review and approval of related party transactions, our Audit Committee will consider the relevant facts and circumstances to decide whether to approve such transactions. In particular, our policy requires our Audit Committee to consider, among other factors it deems appropriate:

- the related person's relationship to us and interest in the transaction,
- the material facts of the proposed transaction, including the proposed aggregate value of the transaction,
- the impact on a director's independence in the event the related person is a director or an immediate family member of the director,
- the benefits to us of the proposed transaction,
- if applicable, the availability of other sources of comparable products or services, and
- an assessment of whether the proposed transaction is on terms that are comparable to the terms available to an unrelated third party or to employees generally.

The Audit Committee may only approve those transactions that are in or are not inconsistent with our best interests and those of our stockholders, as the Audit Committee determines in good faith.

AMENDED AND R ESTATED OPERATING AGREEMENT

In connection with the organizational transactions we effected in connection with our IPO, we amended and restated Carvana Group's existing operating agreement, which we refer to as the "LLC Operating Agreement." In addition, on March 2, 2018, Carvana Group signed an amendment of its LLC Agreement to, among other things, create a class of convertible preferred units. The convertible preferred units were created in connection with the December 5, 2017, issuance and sale of 100,000 shares of convertible preferred stock of Carvana Co. The amendment was effective December 5, 2017. As of December 31, 2018, the 100,000 shares of convertible preferred stock had all been converted into shares of Class A common stock and are no longer outstanding.

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In connection with the issuance of our senior notes (see Carvana's Annual Report on Form 10-K for 2018, page 66–67), Carvana Group amended its LLC agreement to create a class of non-convertible preferred units, which Carvana Co. purchased with its net proceeds from the issuance of these senior notes.

The operations of Carvana Group, and the rights and obligations of the holders of our LLC Units (who we refer to as "LLC Unitholders"), are set forth in the LLC Operating Agreement.

EXCHANGE AGREEMENT

On April 27, 2017, we entered into an exchange agreement with Carvana Co. Sub LLC (our wholly owned subsidiary) and the LLC Unitholders. Under the exchange agreement, LLC Unitholders (and certain permitted transferees thereof) may exchange at any time their LLC Units for either shares of our Class A common stock or for cash, whichever we decide. To the extent LLC Unitholders also hold Class B common stock, they will be required to deliver to us the same number of shares of Class B common stock as Class A common stock being exchanged for. We will then cancel those shares of Class B common stock. As LLC Unitholders exchange their interest in Carvana Group, our indirect interest in Carvana Group will increase correspondingly.

When an LLC Unitholder makes an exchange, they will receive four shares of Class A common stock for every five Class A Units or, at our option, cash equal to the value of a share of Class A common stock multiplied by 0.8 times the number of Class A Units being exchanged. The value of the Class A common stock is determined by the average of the volume-weighted average prices for a share of Class A common stock for each of the three consecutive full trading days ending on and including the last full trading day immediately prior to the related date of exchange. Class B Units are subject to vesting and a participation threshold, and, as a result, LLC Unitholders exchanging Class B Units will receive a number of shares of Class A common stock equal to the Class A common stock value (determined the same way as above) less the applicable participation threshold multiplied by 0.8 times the number of Class B Units being exchanged, divided by the same Class A common stock value, subject to adjustment as set forth in the Exchange Agreement.

REGISTRATION R IGHTS AGREEMENT

In connection with the IPO, we entered into a registration rights agreement with certain LLC unitholders. These LLC unitholders are entitled to request that we register their shares on a long-form or short-form registration statement on one or more occasions in the future, which registrations may be "shelf registrations." All of these LLC unitholders will be entitled to participate in certain of our

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registered offerings, subject to the restrictions in the registration rights agreement. We will pay expenses in connection with the exercise of these rights. The registration rights described in this paragraph apply to (1) shares of our Class A common stock held by certain LLC unitholders, and (2) any of our capital stock (or that of our subsidiaries) issued or issuable with respect to the Class A common stock described in clause (1) with respect to any dividend, stock split, recapitalization, reorganization, or certain other corporate transactions ("Registrable Securities"). These registration rights are also for the benefit of any subsequent holder of Registrable Securities, provided that any particular securities will cease to be Registrable Securities when they have been sold in a registered public offering, sold in compliance with Rule 144 of the Securities Act or repurchased by us or our subsidiaries. In addition, any Registrable Securities held by a person other than an LLC Unitholder and their affiliates will cease to be Registrable Securities if they can be sold without limitation under Rule 144 of the Securities Act.

TAX REC EIVABLE AGREEMENT

We have entered into a Tax Receivable Agreement with LLC Unitholders that will provide for the payment from time to time by us to such persons of 85% of the amount of the benefits, if any, that we realize or, under certain circumstances, are deemed to realize as a result of

1. the increase in our wholly owned subsidiary's proportionate share of the existing tax basis of the assets of Carvana Group and an adjustment in the tax basis of the assets of Carvana Group reflected in that proportionate share as a result of any future exchanges of LLC Units held by an LLC Unitholder for shares of our Class A common stock or cash, and
2. certain other tax benefits related to our making payments under the Tax Receivable Agreement.

We expect to benefit from the remaining 15% of any tax benefits that we actually realize and, except in connection with a change in control, we will not make any payments under the Tax Receivable Agreement until after we have directly or indirectly realized (or have been deemed to have realized) benefits in excess of such payments. These payment obligations are obligations of Carvana Co. and not of Carvana Group. No payments were made during the year ended December 31, 2018.

INDEMNIFICA TION OF OFFICERS AND DIRECTORS

We have entered into indemnification agreements with each of our officers and directors. The indemnification agreements provide the officers and directors with contractual rights to indemnification, expense advancement, and reimbursement, to the fullest extent permitted under Delaware law. Additionally, we may enter into indemnification agreements with any new directors or officers that may be broader in scope than the specific indemnification provisions contained in Delaware law.

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CONTRIBUTION AGREEMENTS

On September 10, 2018, we announced a commitment by our chief executive officer, Ernest Garcia III, to contribute shares of Carvana Co. Class A common stock from his personal shareholdings to Carvana at no charge, intended to fund equity awards of 165 restricted stock units (or roughly $10,000 at the time of the announcement) to each of our then-current employees upon their satisfying certain employment-tenure requirements. During the year ended December 31, 2018, Carvana and Mr. Garcia entered into contribution agreements pursuant to which Mr. Garcia contributed approximately 0.2 million shares of Carvana Co. Class A common stock to Carvana, at no charge. We subsequently granted approximately 0.2 million restricted stock units. Although we do not expect Mr. Garcia to incur any tax obligations related to these contributions, we have indemnified Mr. Garcia from any such obligations that may arise.

RELATIONSHIP WITH DRIVETIME

Prior to November 1, 2014, Carvana, LLC was a wholly owned subsidiary of DriveTime. On November 1, 2014, DriveTime distributed the units of Carvana, LLC to the unit holders of DriveTime on a pro rata basis, which we refer to as the "Spinoff." DriveTime is controlled by our controlling stockholder, Ernest Garcia II, who is also the father of our Chief Executive Officer, Ernest Garcia III. Following the Spinoff, the unitholders of DriveTime contributed the Carvana, LLC units to Carvana Group.

Subsequent to the Spinoff, we entered into several agreements with DriveTime and affiliated companies that were intended to facilitate our transition to a standalone company, which are described below, along with subsequent agreements. We will refer to DriveTime and its subsidiaries and affiliates, other than us, as "DriveTime". There can be no assurances that DriveTime or its affiliated companies will enter into any new agreements or arrangements with us, or extend or renew existing agreements or arrangements, on the same terms, similar terms, or at all.

ATLANTA, GA HUB LOCATION LEASE GUARANTEE

In May 2013, DriveTime guaranteed our obligations under the lease governing our occupancy of the property on which an Atlanta hub is located. We do not compensate DriveTime for the guarantee. The initial lease term and rent payments commenced December 1, 2013, and the current term expires on November 30, 2019. Under the lease we may enter into one more two-year extension term. Base rent during the initial term was $9.5 thousand per month but may increase by 3% of the then-current base rent during each extension term. Monthly rent payments for January 1, 2018, through November 30, 2018, were $10.4 thousand per month, and as of December 1, 2018, are $10.7 thousand per month through November 30, 2019. In addition to base rent, we are responsible for our proportionate share of common area maintenance charges.

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LEASE AGREEMENT

In connection with the Spinoff, we entered into a lease agreement dated November 1, 2014, with DriveTime that governs our access to and utilization of space at DriveTime inspection and reconditioning centers ("IRCs") for vehicle inspection and reconditioning in Blue Mound, Texas, and Delanco, New Jersey, and previously for inspection and reconditioning in Winder, Georgia. The lease agreement was most recently amended in December 2018. The agreement also governs utilization of office space and parking spaces at various IRCs and retail facilities that we use as hubs.

Under the amended lease agreement, hubs generally have cancellable two-year terms subject to certain two consecutive one-year renewal options and subject to the terms of any master lease under which we are subleasing. We increased our utilization of the DriveTime IRCs in Blue Mound, Texas, and Delanco, New Jersey, to 100% as of July 2018. Under the lease agreement, we pay a monthly rental fee related to our pro rata utilization of space at such facilities plus a pro rata share of each facility's actual insurance costs and real estate taxes. As it relates to locations where we recondition vehicles, our share of facility and reconditioning-supplies expenses are calculated monthly by multiplying the actual costs for operating the inspection centers by an amount related to our pro rata share of total reconditioned vehicles and parking spaces used at such IRCs in a given month. Total expenses related to this lease agreement were approximately $5.1 million for the year ended December 31, 2018.

HOUSTON, TX VENDING MACHINE LEASE GUARANTEE

On July 14, 2015, DriveTime guaranteed our obligations under the lease governing our occupancy of the property on which our Houston vending machine is located. We do not compensate DriveTime for the guarantee. The initial lease term commenced January 8, 2016, and we began paying base rent on May 7, 2016. Base rent during the initial term is $23.0 thousand per month, and the initial term expires on April 6, 2026. We have the option to extend the initial term for four additional consecutive five-year periods. Base rent during each extension term will increase 10% of the then-current base rent for each subsequent extension.

TEMPE, AZ OFFICE LEASE

In September 2016, we entered into an agreement to lease the second floor of our corporate headquarters in Tempe, Arizona beginning April 2017. Pursuant to this lease, we paid an initial monthly base rent of $107.0 thousand, which increases throughout the duration of the lease. The lease has an initial term of 83 months and we have three 5-year extension options. At the request of the landlord, DriveTime agreed to partially guarantee our lease payments until the 30th full calendar month of the lease. We do not compensate DriveTime for the guarantee.

In connection with this lease, we entered into a sublease with DriveTime for our use of the first floor of the same building. Under the sublease, which is coterminous with DriveTime's master lease and has a term of 83 months, subject to our right to exercise three 5-year extension options, we pay DriveTime rent equal to the amounts due under the master lease, including initial monthly base rent of $102.0 thousand, beginning April 1, 2018, which increases throughout the duration of the sublease and master lease. Total expenses related to this lease agreement were approximately $0.9 million for the year ended December 31, 2018.

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TOLLESON, AZ INSPECTION AND RECONDITIONING CENTER LEASE

In December 2016, we entered into a lease agreement with Verde Investments Inc. ("Verde"), an affiliate of DriveTime, for an IRC in Tolleson, Arizona. The lease commenced in February, 2017. In August 2018, we entered into an additional lease agreement with a coterminous initial term with Verde for contiguous space to use in connection with such center, which began that same month. The leases expire in December 2031 subject to our right to extend for four 5-year terms. Pursuant to the leases, we pay an initial base rent of $137.5 thousand per month, which is adjusted each year beginning on January 1, 2018, and $57.1 thousand per month, which is adjusted each year beginning on January 1, 2020, respectively, each in accordance with the Consumer Price Index, subject to a minimum increase of 2% per year and a maximum increase of 5% per year. Total expense related to these lease agreements was approximately $2.2 million for the year ended December 31, 2018.

WINDER, GA INSPECTION AND RECONDITIONING CENTER LEASE

In February 2017, we entered into a lease with DriveTime for an IRC in Winder, Georgia where we have maintained partial occupancy previously under the DriveTime lease agreement described above. We are now the sole occupant. The lease has an 8-year term, subject to our ability to exercise three renewal option terms of five years each. We began paying base rent of $83.3 thousand per month as of March 1, 2017. The monthly rent is subject to adjustment each year beginning January 1, 2018, increasing in an amount equal to the percentage increase in the Consumer Price Index, with a maximum of 5% and a minimum of 2%. The monthly rent increased on January 1, 2018, to $85.1 thousand. Our total expenses related to this lease agreement were approximately $1.1 million for the year ended December 31, 2018.

HUB LEASE AGREEMENT

In March 2017, we entered into a lease with DriveTime that governs our utilization of office space and parking spaces at retail facilities that we use as hubs. The lease was most recently amended in December 2018. Under the lease agreement, we pay a monthly rental fee related to our pro rata utilization of space at such facilities plus a pro rata share of each facility's actual insurance costs and real estate taxes. Each hub has an initial cancellable term of two years, subject to certain two consecutive one-year renewal options. Our total expenses related to this lease agreement were approximately $0.4 million for the year ended December 31, 2018.

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CLEVELAND, OH AREA INSPECTION AND RECONDITIONING CENTER SUBLEASE

In November 2018, Carvana entered into a sublease agreement with DriveTime for an inspection and reconditioning center near Cleveland, Ohio. Pursuant to the sublease, Carvana temporarily shared space at the IRC until DriveTime vacated the facility in February 2019, at which point we purchased certain leasehold improvements and equipment at the facility from DriveTime for approximately $4.3 million (which amount represented the book value of such improvements and equipment net of accumulated depreciation and amortization) and became the sole occupant. We pay a base rent of $35.0 thousand per month which increases in each extension term. The sublease has an initial term of three years. We have the ability to exercise three renewal options of five years each. Before DriveTime vacated the property, we paid a monthly rental fee related to our pro rata utilization of space at the facility plus a pro rata share of the facility's actual insurance costs and real estate taxes. Our share of facility and shared reconditioning supplies expenses were calculated based on the actual costs for operating the inspection and reconditioning center and our pro rata share of total reconditioned vehicles and parking spaces at the IRC in a given month. Our total expenses related to this lease agreement were $29.4 thousand for the year ended December 31, 2018.

NASHVILLE, TN AREA INSPECTION AND RECONDITIONING CENTER LEASE

On February 28, 2019, Carvana assumed a lease from DriveTime of an IRC near Nashville, Tennessee. As part of the agreement, we agreed to purchase certain leasehold improvements and equipment at the facility from DriveTime for approximately $2.0 million (which amount represented the book value of such improvements and equipment net of accumulated depreciation and amortization). The term expires on October 31, 2023, subject to our ability to exercise three renewal options of five years each. DriveTime will remain a partial occupant of the IRC until April 1, 2019 and will not be fully released from lease obligations by the landlord. Beginning April 1, 2019, Carvana will be the sole occupant of the IRC. Base rent during the current term of the lease is $21.0 thousand per month and will increase to between $30.0–$31.0 thousand per month in the second half of 2019, depending on the extent of Carvana's expansion of leased space, and will further increase during each extension term over the then-current base rent by an amount equal to the percentage increase in the Consumer Price Index, with a maximum of 15% and a minimum of 10%.

SERVICING AGREEMENT WITH DRIVETIME

In December 2015, we entered into a servicing agreement with DriveTime, wherein DriveTime agreed to perform certain servicing and administrative functions with respect to automotive finance receivables we own after origination and before sale. In the year ended December 31, 2018, DriveTime had aggregate earnings of approximately $0.9 million for performing servicing functions for such receivables.

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MASTER PURCHASE AND SALE AGREEMENT

In December 2016, we entered into a master purchase and sale agreement pursuant to which we sell finance receivables meeting certain underwriting criteria to certain financing partners, including Ally Bank and Ally Financial (collectively, "Ally"). On November 3, 2017, we amended this agreement to increase the aggregate amount of principal balances of finance receivables we can sell to $1.5 billion. We amended the agreement again on November 2, 2018 to, among other things and subject to the terms of the agreement, increase the purchase commitment to up to a maximum of $1.25 billion of additional principal balances of finance receivables during the remaining term of the agreement.

During the year ended December 31, 2018, we sold approximately $733.4 million in principal balances of finance receivables under the purchase and sale agreement. As of December 31, 2018, there was approximately $1.1 billion of unused capacity under this agreement. The agreement was most recently amended on January 4, 2019.

The financing partners have engaged DriveTime as servicer of the receivables purchased under this agreement. DriveTime had aggregate earnings of $3.1 million pursuant to the agreement for performing servicing functions for the year ended December 31, 2018.

MASTER TRANSFER AGREEMENTS

In December 2016, we entered into a master transfer agreement pursuant to which we sell finance receivables meeting certain underwriting criteria to certain financing partners (the "2016 Master Transfer Agreement"). Under the agreement, the purchaser trust agreed to purchase up to an aggregate of $292.2 million in principal balances of finance receivables. In November 2017, we terminated the remaining capacity under the 2016 Master Transfer Agreement and replaced this facility by entering into a new master transfer agreement pursuant to which we sell finance receivables meeting certain underwriting criteria to certain financing partners (the "2017 Master Transfer Agreement"). Under the agreement, the purchaser trust agreed to purchase up to an aggregate of $357.1 million in principal balances of finance receivables.

On November 2, 2018, we amended the 2017 Master Transfer Agreement to, among other things and subject to the terms of the agreement, increase and extend the trust's commitment to purchase finance receivables from us. The trust's currently available financing following the amendment permits up to $454.5 million in principal balances of finance receivables to be purchased, and the 2017 Master Transfer Agreement's purchase commitment contemplates the trust securing up to three times the currently available financing in the aggregate.

During the year ended December 31, 2018, we sold approximately $348.8 million in principal balances of finance receivables under the 2017 Master Transfer Agreement prior to the amendment in November, excluding those that were part of the refinancing transactions described below under "Refinancing Transfer Agreements". As of December 31, 2018, there was approximately $454.5 million of unused capacity under 2017 Master Transfer Agreement. During the year ended December 31, 2017, Carvana sold an aggregate of approximately $163.7 million in principal balances of finance receivables under the 2016 Master Transfer Agreement and 2017 Master Transfer Agreement.

The purchasers engaged Carvana as the administrator of the trust and DriveTime as servicer of the receivables. In the year ended December 31, 2018, we had aggregate earnings of $4.0 thousand for performing trust administrator functions for the purchasers and DriveTime had aggregate earnings of $4.0 million for performing servicing functions.

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REFINANCING TRANSFER AGREEMENTS

On August 6, 2018, in connection with a refinancing transaction, we purchased finance receivables we had previously sold under the 2017 Master Transfer Agreement and simultaneously entered into a transfer agreement with a purchaser trust under which the trust immediately purchased such finance receivables from us. On December 21, 2018, in connection with another refinancing transaction, we purchased finance receivables we had previously sold under the 2017 Master Transfer Agreement and simultaneously entered into another transfer agreement with a purchaser trust under which the trust purchased such finance receivables and other finances receivables from us. During the year ended December 31, 2018, we sold approximately $477.9 million in principal balances of finance receivables under these transfer agreements.

The trusts engaged Carvana as the administrator of the trust and DriveTime as servicer of the receivables. In the year ended December 31, 2018, we had aggregate earnings of $0.0 thousand for performing trust administrator functions for the purchasers and DriveTime had aggregate earnings of $1.5 million for performing servicing functions.

MASTER DEALER AGREEMENT

In December 2016, we entered into a master dealer agreement with DriveTime. Pursuant to this agreement, we may sell vehicle service contracts ("VSCs") to customers purchasing a vehicle from us. We earn a commission on each VSC sold to our customers and DriveTime is obligated by and subsequently administers the VSCs. We collect the retail purchase price of the VSCs from our customers and remit the purchase price net of commission to DriveTime. During the year ended December 31, 2018, we recognized approximately $23.7 million of commissions earned on VSCs sold to our customers and administered by DriveTime, net of a reserve for estimated contract cancellations. On November 5, 2018 (effective October 1, 2018), we amended the master dealer agreement to allow Carvana to receive payments for excess reserves based on the performance of the VSCs versus the reserves held by the VSC administrator, once a required claims period for such VSCs has passed. During the year ended December 31, 2018, Carvana recognized approximately $1.9 million related to payments for excess reserves to which it expects to be entitled.

Beginning in 2017, DriveTime also administers a portion of our GAP waiver coverage and the limited warranty provided to all customers under the master dealer agreement. We pay a per-contract fee to DriveTime to administer a portion of the GAP waiver coverage we sell to our customers and a per-vehicle fee to DriveTime to administer the limited warranty included with every purchase. We incurred costs of approximately $2.2 million during the year ended December 31, 2018, related to the administration of GAP waiver coverage and limited warranty.

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IP LICENSE AGREEMENT

In February 2017, we entered into a license agreement that governs the rights of certain intellectual property owned by us and the rights of certain intellectual property owned by DriveTime. The license agreement, which was amended and restated on April 14, 2017, generally provides that each party grants to the other certain limited exclusive (other than with respect to the licensor party and its affiliates) and nonexclusive licenses to use certain of its intellectual property, and each party agrees to certain covenants not to sue the other party, its affiliates and certain of its service providers in connection with various patent claims. The exclusive license to DriveTime is limited to the business that is primarily of sub-prime used car sales to retail customers. However, upon a change of control of either party, both parties' license rights as to certain future improvements to licensed intellectual property and all limited exclusivity rights are terminated. The agreement does not provide a license to any of our patents, trademarks, logos, customers' personally identifiable information or any intellectual property related to our vending machine, automated vehicle photography or certain other elements of our brand.

AIRCRAFT TIME SHARING AGREEMENT

On October 22, 2015, we entered into an agreement, which was amended on May 15, 2017, to share usage of two aircraft operated by DriveTime. Pursuant to the agreement, we agreed to reimburse DriveTime for actual expenses for each of our flights. The original term of the agreement was for 12 months, with perpetual 12-month automatic renewals. Either the lessors or the lessees can terminate the lease with 30 days' written notice. We reimbursed DriveTime $0.5 million under this agreement during the year ended December 31, 2018.

UNSECURED SENIOR NOTES

In September 2018, we issued an aggregate of $350.0 million in senior unsecured notes due 2023. The senior notes accrue interest at a rate of 8.875% per annum, which is payable semi-annually in arrears on April 1 and October 1 of each year beginning April 1, 2019. Verde Investments, Inc., an affiliate of DriveTime, purchased notes reflecting $25.0 million of outstanding principal and subsequently sold a portion. As of December 31, 2018, Verde held $15.0 million of principal of the notes.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding beneficial ownership of our common stock as of February 27, 2019, by:

- each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our common stock,
- each of our named executive officers,
- each of our directors, and
- all of our current executive officers and directors as a group.

We have determined beneficial ownership in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Unless otherwise indicated below, it is our understanding that the persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially own, subject to community property laws where applicable. In computing the number of shares of our common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of our common stock subject to options, Class B Units, or restricted stock units held by that person that are currently exercisable or exercisable within 60 days of February 27, 2019. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person. We have based the percentage ownership of our Class A common stock on 41,201,324 shares of our common stock outstanding as of February 27, 2019, and have based the percentage ownership of our Class B common stock on 104,336,303 shares as of the same date. Unless otherwise indicated, the address of each beneficial owner listed on the table below is c/o Carvana Co., 1930 W Rio Salado Pkwy, Tempe, AZ 85281.

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NAME OF BENEFICIAL OWNER	SHARES BENEFICIALLY OWNED				
	CLASS A COMMON STOCK (1)		CLASS B COMMON STOCK (1)		
	SHARES	%	SHARES	%	VOTING %
Ernest C. Garcia II c/o Verde Investments, Inc.	1,578,208(2)	4%	87,701,897(3)	84%	91%
Spruce House Investment Management LLC; Spruce House Capital LLC; Spruce House Partnership LP; Zachary Sternberg; Benjamin Stein	5,600,000(4)	14%	—	—%	*
Melvin Capital Management LP; Melvin Capital Master Fund Ltd	3,725,000(5)	9%	—	—%	*
FMR LLC	3,591,784(6)	9%	—	—%	*
The Vanguard Group	2,954,186(7)	7%	—	—%	*
Nantahala Capital Management, LLC; Wilmot B. Harkey; Daniel Mack	2,329,714(8)	5%	—	—%	*
CAS Investment Partners, LLC; Sosin Partners, L.P.; Clifford Sosin	2,194,504(9)	5%	—	—%	*
Blackrock, Inc.	2,104,793(10)	5%	—	—%	*
Executive Officers and Directors					
Ernest Garcia, III	93,060(11)	*	15,616,526(12)	15%	16%
Mark Jenkins	876,676(13)	2%	—	—%	*
Benjamin Huston	916,676(14)	2%	—	—%	*
Daniel Gill	468,253(15)	1%	—	—%	*
Ryan Keeton	417,269(16)	1%	—	—%	*
Ira Platt	173,786(17)	*	130,612*		*
Gregory Sullivan	20,619(18)	*	—	—%	*
Dan Quayle	20,619(18)	*	—	—%	*
Michael Maroone	71,619(19)	*	—	—%	*
All executive officers and directors (10 individuals)	3,203,895(20)	8%	15,747,138	15%	16%

(1) Each share of Class A common stock entitles the registered holder thereof to one vote on all matters presented to stockholders for a vote generally, including the election of directors. Each share of our Class B common stock held by the Garcia Parties entitles its holder to ten votes on all matters to be voted on by stockholders generally, including the election of directors, for so long as the Garcia Parties maintain, in the aggregate, direct or indirect beneficial ownership of at least 25% of the outstanding shares of Class A common stock (determined on an as-exchanged basis assuming that all of the LLC Units were exchanged for Class A common stock). Each other share of our Class B common stock entitles its holder to one vote on all matters to be voted on by stockholders generally, including the election of directors. The Class A common stock and Class B common stock vote as a single class on all matters except as required by law or the certificate of incorporation. A "*" indicates percentages of less than 1%.

(2) This number includes 1,464,517 shares of our Class A common stock that Mr. Garcia II purchased through Verde Investments, Inc. ("Verde"), of which Mr. Garcia II is the 100% owner. This number also includes 13,691 shares of our Class A common stock owned by the Ernest Irrevocable 2004 Trust III and 100,000 shares of our Class A common stock owned by the Ernest C. Garcia III Multi-Generational Trust III. While Ernest Garcia II is the investment trustee over Ernest C. Garcia III Multi-Generational Trust III, the trust is irrevocable and he is not a beneficiary. While Ernest Garcia II and Ernest Garcia III are the joint investment trustees over Ernest Irrevocable 2004 Trust III, the trust is irrevocable and Mr. Garcia II is not a beneficiary. Mr. Garcia III is the

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sole beneficiary of the Ernest Irrevocable 2004 Trust III and Mr. Garcia III and his children are the beneficiaries of the Ernest C. Garcia III Multi-Generational Trust III. This information is based on the Form 4 filed with the SEC by Mr. Garcia II on February 27, 2019. Verde's and Mr. Garcia II's address is 1720 W. Rio Salado Parkway, Suite A, Tempe, AZ 85281.

(3) This number includes 52,937,458 shares of Class B common stock owned directly by Mr. Garcia II; 8,000,000 shares of Class B common stock owned by ECG III SPE, of which Mr. Garcia II is the 100% owner; 2,860,439 shares of Class B common stock owned by DriveTime Sales and Finance Company LLC. Mr. Garcia II is the chairman of the board of directors and largest stockholder of DriveTime, of which DriveTime Sales and Finance Company LLC is a wholly owned subsidiary. This number also includes 11,952,000 shares of Class B common stock owned by the Ernest Irrevocable 2004 Trust III, of which Mr. Garcia III is the sole beneficiary, and 11,952,000 shares of Class B common stock owned by the Ernest C. Garcia III Multi-Generational Trust III, of which Mr. Garcia III is a beneficiary together with his children. While Ernest Garcia II is the investment trustee over Ernest C. Garcia III Multi-Generational Trust III, the trust is irrevocable and he is not a beneficiary. While Ernest Garcia II and Ernest Garcia III are the joint investment trustees over Ernest Irrevocable 2004 Trust III, the trust is irrevocable and Mr. Garcia II is not a beneficiary. These shares of Class B common stock together with the corresponding LLC Units may be exchanged for 87,701,897 shares of Class A common stock. These shares of Class A common stock represent approximately 58% of the shares of Class A common stock that would be outstanding if all outstanding LLC Units were exchanged and all outstanding shares of Class B common stock were converted at that time. This information is based on the Form 4 filed with the SEC by Mr. Garcia II on February 27, 2019. Verde's, ECG III SPE's, and Mr. Garcia II's address is 1720 W. Rio Salado Parkway, Suite A, Tempe, AZ 85281.

(4) Spruce House Investment Management LLC; Spruce House Capital LLC; Spruce House Partnership LP; Zachary Sternberg and Benjamin Stein report shared voting and dispositive power of 5,500,000 shares of Class A common stock. Zachary Sternberg and Benjamin Stein each report sole voting and dispositive power of 50,000 shares of Class A common stock. Spruce House Partnership LP holds the 5,500,000 shares with shared voting and dispositive power and Spruce House Capital LLC serves as the general partner and Spruce House Investment Management LLC serves as the investment manager. Zachary Sternberg and Benjamin Stein each serve as a managing member of the Spruce House Capital LLC and the Spruce House Investment Management LLC. This information is based on the Schedule 13G/A filed with the SEC on February 14, 2019. The address for each of these reporting persons is 435 Hudson Street, 8th Floor New York, NY 10014.

(5) Melvin Capital Management LP is the investment manager of Melvin Capital Master Fund Ltd. Melvin Capital Management LP reports shared voting and dispositive power of 3,725,000 shares of Class A common stock. The number of shares reported above consists of 1,606,827 shares of Class A common stock and call options exercisable into 861,600 shares of Class A common stock held by Melvin Capital Master Fund Ltd; 300,909 shares of Class A common stock and call options exercisable into 161,200 shares of Class A common stock held by Melvin Capital Onshore LP; and 517,264 shares of Class A common stock and call options exercisable into 277,200 shares of Class A common stock held by one or more managed accounts. Melvin Capital Management LP, as the investment manager to these funds and accounts, may be deemed to beneficially own the 2,425,000 shares of Common Stock and the call options exercisable into 1,300,000 shares of Class A common stock held by them. This information is based on the Schedule 13G/A filed with the SEC on February 15, 2019. The address for each of these reporting persons is 527 Madison Avenue, 25th Floor, New York, NY 10022.

(6) FMR LLC reports sole power to dispose or direct the disposition of 3,591,784 shares of Class A common stock. This information is based on the Schedule 13G filed with the SEC on February 14, 2019. FMR LLC's address is 245 Summer Street, Boston, MA 02210.

(7) The Vanguard Group reports shared power to dispose or direct the disposition of 63,700 of these shares of Class A common stock. This information is based on the Schedule 13G filed with the SEC on February 11, 2019. The Vanguard Group's address is 100 Vanguard Blvd., Malvern, PA 19355.

(8) Wilmot B. Harkey and Daniel Mack are the managing members of Nantahala Capital Management, LLC and together report shared voting and dispositive power with respect to these shares. This number of shares includes call options exercisable into 1,450,000 shares of Class A common stock. This information is based on the Schedule 13G filed with the SEC on February 14, 2019. The address for each of these reporting persons is 19 Old Kings Highway S, Suite 200 Darien, CT 06820.

(9) CAS Investment Partners, LLC, Sosin Partners, L.P., and Clifford Sosin report shared voting and dispositive power with respect to 2,167,766 of these shares and Mr. Sosin reports sole voting and dispositive power with respect to 26,738 of these shares. Sosin Partners, L.P. owns an aggregate of 2,167,766 shares of Class A common stock and CAS Investment Partners, LLC,

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is the investment manager of the fund. As a result, CAS Investment Partners, LLC, possesses the power to vote and dispose or direct the disposition of all the shares owned by the fund. Thus, CAS Investment Partners, LLC, may be deemed to beneficially own a total of 2,167,766 shares. Mr. Sosin is the managing member of CAS Investment Partners, LLC. As a result, Mr. Sosin possesses the power to vote and dispose or direct the disposition of all the shares beneficially owned by CAS Investment Partners, LLC as investment manager of Sosin Partners, L.P. Mr. Sosin disclaims beneficial ownership of any of the shares held by Sosin Partners, L.P. This information is based on the Schedule 13G/A filed with the SEC on February 14, 2019. The address for each of these reporting persons is 8 Wright Street, 1st Fl. Westport, CT 06880.

(10) Blackrock, Inc. reports sole power to dispose or direct the disposition of these shares of Class A common stock. This information is based on the Schedule 13G filed with the SEC on February 8, 2019. Blackrock, Inc.'s address is 55 East 52nd Street, New York, NY 10055.

(11) This number includes 71,875 shares of Class A common stock owned directly by Ernest Garcia III, and 13,691 shares of our Class A common stock owned by the Ernest Irrevocable 2004 Trust III. While Ernest Garcia II and Ernest Garcia III are the investment trustees over Ernest Irrevocable 2004 Trust III, the trust is irrevocable and Mr. Garcia II is not a beneficiary. Mr. Garcia III is the sole beneficiary of the Ernest Irrevocable 2004 Trust III. This number also includes 3,997 shares of Class A common stock issuable upon the exercise of options that vest on April 1, 2019, and 3,497 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 14,572 shares of Class A common stock underlying performance-based RSUs that are subject to vesting on the date that performance objectives are achieved, so long as it is achieved prior to April 27, 2027.

(12) This number includes 3,664,526 shares of Class B common stock owned directly by Mr. Garcia III, and 11,952,000 shares of Class B common stock owned by the Ernest Irrevocable 2004 Trust III, of which Mr. Garcia III is the sole beneficiary. While Ernest Garcia II and Ernest Garcia III are the investment trustees over Ernest Irrevocable 2004 Trust III, the trust is irrevocable and Mr. Garcia II is not a beneficiary. Mr. Garcia III is the sole beneficiary of the Ernest Irrevocable 2004 Trust III. These shares of Class B common stock together with the corresponding LLC Units may be exchanged for 15,616,526 shares of Class A common stock. These shares of Class A common stock represent approximately 10% of the shares of Class A common stock that would be outstanding if all outstanding LLC Units were exchanged and all outstanding shares of Class B common stock were converted at that time.

(13) This number includes 120 shares of Class A common stock owned directly by Mr. Jenkins; 869,531 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 3,747 shares of Class A common stock issuable upon the exercise of options that vest on April 1, 2019; and 3,278 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 13,662 shares of Class A common stock underlying performance-based RSUs that are subject to vesting on the date that performance objectives are achieved, so long as it is achieved prior to April 27, 2027.

(14) This number includes 120 shares of Class A common stock owned directly by Mr. Huston; 909,531 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 3,747 shares of Class A common stock issuable upon the exercise of options that vest on April 1, 2019; and 3,278 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 13,662 shares of Class A common stock underlying performance-based RSUs that are subject to vesting on the date that performance objectives are achieved, so long as it is achieved prior to April 27, 2027.

(15) This number includes 120 shares of Class A common stock owned directly by Mr. Gill; 461,950 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 3,298 shares of Class A common stock issuable upon the exercise of options that vest on April 1, 2019; and 2,885 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 12,022 shares of Class A common stock underlying performance-based RSUs that are subject to vesting on the date that performance objectives are achieved, so long as it is achieved prior to April 27, 2027.

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(16) This number includes 6,120 shares of Class A common stock owned directly by Mr. Keeton; 404,966 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 3,298 shares of Class A common stock issuable upon the exercise of options that vest on April 1, 2019; and 2,885 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 12,022 shares of Class A common stock underlying performance-based RSUs that are subject to vesting on the date that performance objectives are achieved, so long as it is achieved prior to April 27, 2027.

(17) This number includes 20,000 shares of Class A common stock owned directly by Mr. Platt and 2,500 shares of Class A common stock held directly and jointly by Mr. Platt's parents. This number also includes 130,667 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 10,309 options to purchase shares of Class A common stock that vested on April 27, 2018; and 10,310 options to purchase shares of Class A common stock that vest on April 27, 2019. This number excludes 130,612 shares of Class A common stock issuable in exchange for Class B common stock and LLC Units held by Mr. Platt and his dependent son, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019). These shares of Class A common stock represent less than 1% of the shares of Class A common stock that would be outstanding if all outstanding LLC Units were exchanged and all outstanding shares of Class B common stock were converted at that time.

(18) This number includes 10,309 options to purchase shares of Class A common stock that vested on April 27, 2018, and 10,310 options to purchase shares of Class A common stock that vest on April 27, 2019.

(19) This number includes 30,000 shares of Class A common stock owned directly by Mr. Maroone, 1,000 shares of Class A common stock held directly by the Maroone Family Partnership, LP, an entity controlled by Mr. Maroone that Mr. Maroone disclaims beneficial ownership of except to the extent of his pecuniary interest therein, and 20,000 shares of Class A common stock held directly by the Michael Maroone Family Partnership, LP, an entity controlled by Mr. Maroone. This number also includes 10,309 options to purchase shares of Class A common stock that vested on April 27, 2018, and 10,310 options to purchase shares of Class A common stock that vest on April 27, 2019.

(20) This number includes 2,915,780 shares of Class A common stock issuable in exchange for vested Class B Units including those that will be vested within 60 days of February 27, 2019, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019); 41,236 options to purchase shares of Class A common stock that vested on April 27, 2018; 41,240 options to purchase shares of Class A common stock that vest on April 27, 2019; 21,385 options to purchase shares of Class A common stock that vest on April 1, 2019; and 18,708 shares of Class A common stock issuable upon the vesting and settlement of restricted stock units that vest on April 1, 2019, inclusive of shares to be withheld for tax purposes. This number excludes 15,747,138 shares of Class A common stock issuable in exchange for LLC Units held by our executive officers and directors, based on an assumed price of $41.82 per share (the closing price of our Class A common stock on the NYSE on February 27, 2019). These shares of Class A common stock represent approximately 10% of the shares of Class A common stock that would be outstanding if all outstanding LLC Units were exchanged and all outstanding shares of Class B common stock were converted at that time.

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ITEM 2 – RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee has appointed Grant Thornton LLP as our independent registered public accounting firm for the year ending December 31, 2019. Services provided to Carvana and its subsidiaries by Grant Thornton LLP for the year ended December 31, 2018 are described below and under "Audit Committee Report."

FEES AND SERVICES

The following table summarizes the aggregate fees for professional audit services and other services rendered by Grant Thornton LLP for the years ended December 31, 2018 and 2017:

SERVICES	2018	2017
Audit Fees	$1,524,986(1)	$1,061,451(3)
Audit-Related Fees	$ —	$ —
Tax Fees	$ 349,220(2)	$ 110,489
All Other Fees	$ —	$ —

(1) Includes the aggregate fees for the audit of our annual consolidated financial statements and internal controls, and the reviews of each of our quarterly consolidated financial statements. These fees also include procedures performed related to our follow-on offering completed in April 2018, registration of shares on Form S-3 in May and December 2018, and the issuance of our senior notes in September 2018.
(2) Includes the aggregate fees for tax return preparation and other tax compliance services.
(3) Includes $475,782 in fees related to our initial public offering in April 2017 that were reported in "All Other Fees" in our proxy statement prepared in connection with our 2018 annual meeting of stockholders.

In considering the nature of the services provided by the independent auditor, the Audit Committee determined that such services are compatible with the provision of independent audit services. The Audit Committee discussed these services with the independent auditor and Carvana management to determine that they are permitted under the rules and regulations concerning auditor independence promulgated by the SEC to implement the Sarbanes–Oxley Act of 2002, as well as the American Institute of Certified Public Accountants.

The Audit Committee has adopted a policy that requires advance approval of all audit services as well as non-audit services to the extent required by the Exchange Act and the Sarbanes–Oxley Act of 2002. Unless the specific service has been previously pre-approved with respect to that year, the Audit Committee must approve the permitted service before the independent auditor is engaged to perform it.

The Audit Committee approved all services provided by Grant Thornton LLP. Representatives of Grant Thornton LLP are expected to be present at the annual meeting. They will have the opportunity to make a statement if they desire to do so, and we expect that they will be available to respond to questions.

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Ratification of the appointment of Grant Thornton LLP requires affirmative votes from the holders of a majority of the shares present in person or represented by proxy at the annual meeting and entitled to vote. If Carvana's stockholders do not ratify the appointment of Grant Thornton LLP, the Audit Committee will reconsider the appointment and may affirm the appointment or retain another independent accounting firm. Even if the appointment is ratified, the Audit Committee may in the future replace Grant Thornton LLP as our independent registered public accounting firm if it is determined that it is in Carvana's best interests to do so.

The Audit Committee and the Board of Directors recommend that you vote "FOR" the ratification of the appointment of Grant Thornton LLP as the independent registered public accounting firm of Carvana for the year ending December 31, 2019.

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A UDIT COMMITTEE REPORT

The Audit Committee oversees our financial reporting process on behalf of the Board. The Audit Committee is composed of three independent directors (as defined by the New York Stock Exchange Listing Standards), met nine times in 2018, and operates under a written charter, which is posted on our website at investors.carvana.com/corporate-governance/governance-documents. As provided in the charter, the Audit Committee's oversight responsibilities include monitoring the integrity of our financial statements (including reviewing financial information, the systems of internal controls, the audit process, and the independence and performance of our internal audit function and independent registered public accounting firm) and our compliance with legal and regulatory requirements. However, management has the primary responsibility for the financial statements and the reporting process, including our systems of internal controls. In fulfilling its oversight responsibilities, the Audit Committee

- reviewed and discussed the audited financial statements for the year ended December 31, 2018, with our management;
- discussed with our independent auditors, Grant Thornton LLP, the matters required to be discussed by Public Company Accounting Oversight Board ("PCAOB") Auditing Standard No. 1301 (Communications with Audit Committees); and
- received the written disclosures and the letter from Grant Thornton LLP required by applicable requirements of the PCAOB regarding Grant Thornton LLP's communications with the audit committee concerning independence, and has discussed with Grant Thornton LLP the independence of Grant Thornton LLP.

Based on the Audit Committee's review and discussions noted above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in our Annual Report on Form 10-K for the year ended December 31, 2018.

Respectfully submitted by:

Ira Platt
Gregory Sullivan
Michael Maroone

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ITEM 3 – SAY ON PAY

We are asking stockholders to approve, on an advisory basis, the compensation of our named executive officers as disclosed in the "Compensation Discussion and Analysis," the "Summary Compensation Table," and the related compensation tables and narrative. This item is being presented pursuant to Section 14A of the Securities Exchange Act of 1934. Although this advisory vote is not binding, the Compensation and Nominating Committee will consider the voting results when evaluating our executive compensation program.

Our executive compensation programs are designed to support our long-term success and reflect our pay-for-performance culture. Our company has grown dramatically over the years. Our growth has few historical precedents and makes us one of the fastest-growing technology, consumer, or retail companies at our scale, and in 2018 we continued to grow rapidly, with another year of triple-digit unit and revenue growth while simultaneously making significant progress in gross profit per unit and accelerating our operating leverage. We have a strong belief in promoting a pay-for-performance culture, and, accordingly, as described in the "Compensation Discussion and Analysis" of this proxy statement, the Compensation and Nominating Committee has set challenging performance targets based not on last year's achievements but continued rapid growth, and has structured our executive compensation program to tie total compensation to long-term stockholder value, as reflected primarily in our stock price. We believe that our executive compensation plans effectively support our strategic and financial goals, create a culture of teamwork, and are directly tied to the performance of the company and shareholder outcomes.

The Board recommends a vote "FOR" approval, on an advisory basis, of our executive compensation as described in this proxy statement.

ITEM 4 – SAY ON PAY FREQUENCY

Pursuant to Section 14A of the Exchange Act, we are asking stockholders to cast an advisory vote on the frequency of future advisory votes on executive compensation. Stockholders may specify whether they prefer such votes to occur every year, every two years, or every three years, or they may abstain. The Board recommends that this vote occur every year.

Although the stockholders' vote on this proposal is not binding, the Board will consider the voting results in determining the frequency of future advisory votes. Notwithstanding the Board's recommendation and the outcome of the stockholder vote, the Board may in the future decide to conduct advisory votes on a more or less frequent basis and may vary its practice based on factors such as discussions with stockholders and the adoption of material changes to compensation programs.

The Board recommends stockholders vote, on an advisory basis, to conduct future advisory votes on executive compensation every "ONE YEAR."

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OTHER MATTERS

We are not aware of any matters other than those discussed in the foregoing materials contemplated for action at the annual meeting. The persons named in the proxy card will vote in accordance with the recommendation of the Board on any other matters incidental to the conduct of, or otherwise properly brought before, the annual meeting. The proxy card contains discretionary authority for them to do so.

INCORPORATION BY REFERENCE

The "Audit Committee Report" included in this proxy statement shall not be deemed soliciting material or filed with the SEC and shall not be deemed incorporated by reference into any prior or future filings made by us under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate such information by reference. In addition, this document includes website addresses, which are intended to provide inactive, textual references only. The information on these websites is not part of this document.

AVAILABILITY OF SEC FILINGS, CODE OF CONDUCT, AND COMMITTEE CHARTERS

Copies of our reports on Forms 10-K, 10-Q, 8-K, all amendments to those reports filed with the SEC, our code of business conduct, corporate governance guidelines, the charters of the Audit Committee and Compensation and Nominating Committee, and any reports of beneficial ownership of our common stock filed by executive officers, directors and beneficial owners of more than 10% of our outstanding common stock are posted on and may be obtained through our website, investors.carvana.com, or may be requested in print, at no cost, by email at investors@carvana.com or by mail to Carvana Co., 1930 W. Rio Salado Pkwy, Tempe, AZ 85281, Attention: Investor Relations.

WHERE TO FIND ADDITIONAL INFORMATION

We are subject to the informational requirements of the Exchange Act and in accordance therewith, we file annual, quarterly, and current reports and other information with the SEC. This information can be inspected and copied at the Public Reference Room at the SEC's office at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Such information may also be accessed electronically by means of the SEC's home page on the internet at www.sec.gov. We are an electronic filer, and the SEC maintains an internet site at www.sec.gov that contains the reports and other information we file electronically. Our website address is investors.carvana.com. Please note that our website address is provided as an inactive textual reference only. We make available free of charge, through our website, our annual report on Form 10-K, as amended, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. The information provided on or accessible through our website is not part of this proxy statement.

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COST OF PROXY SOLICITATION

Carvana is paying the expenses of this solicitation. Carvana will also make arrangements with brokerage houses and other custodians, nominees and fiduciaries to forward proxy materials to beneficial owners of stock held as of the record date by such persons, and Carvana will reimburse such persons for their reasonable out-of-pocket expenses in forwarding such proxy materials. In addition to solicitation by mail, directors, officers, and other employees of Carvana may solicit proxies in person or by telephone, facsimile, email, or other similar means.

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ANNEX

100K MILESTONE GIFT

On September 10, 2018, we announced a commitment by our chief executive officer, Ernest Garcia III, to contribute 165 shares of Class A common stock to us from his personal shareholdings for every one of our then-existing employees upon their satisfying certain employment tenure requirements. In connection with these contributions, we have made corresponding grants of 165 restricted stock units under our 2017 Omnibus Incentive Plan to each employee who has satisfied the requirements and intend to make grants to the remaining then-existing employees as they satisfy the requirements (the "100k Milestone Gift" or "Gift"). Under U.S. GAAP, the 100k Milestone Gift is treated as compensation expense, a portion of which relates to the production of our used vehicle inventory and is therefore capitalized to inventory and subsequently recognized within costs of sales when the related inventory is sold.

NON-GAAP FINANCIAL MEASURES

To supplement the consolidated financial statements, which are prepared and presented in accordance with GAAP, we also present the following non-GAAP measures: gross profit ex-Gift, gross profit per unit ex-Gift, EBITDA ex-Gift, and EBITDA margin ex-Gift. We believe the presentation of both GAAP and non-GAAP financial measures provides investors with increased transparency into financial measures used by our management team, and it also improves investors' understanding of our underlying operating performance and their ability to analyze our ongoing operating trends. All historic non-GAAP financial measures have been reconciled with the most directly comparable GAAP financial measures.

GROSS PROFIT EX-GIFT AND GROSS PROFIT PER UNIT EX-GIFT

Gross profit ex-Gift and gross profit per unit ex-Gift are non-GAAP supplemental measures of operating performance that do not represent and should not be considered an alternative to gross profit, as determined by GAAP. Gross profit ex-Gift is defined as gross profit before compensation expense related to the 100k Milestone Gift included in cost of sales. Gross profit per Unit ex-Gift is Gross Profit ex-Gift divided by units sold. We use Gross Profit ex-Gift to measure the operating performance of our business and Gross Profit per Unit ex-Gift to measure our operating performance relative to our units sold. We believe that Gross Profit ex-Gift and Gross Profit per Unit ex-Gift are useful measures to us and to our investors because they exclude the expense associated with the 100k Milestone Gift recognized in cost of sales. We expect the 100k Milestone Gift to be a one-time award program for which we will recognize varying amounts of expense beginning in the second half of 2018 and continuing through the first half of 2020, and therefore we believe the related expense does not reflect our core operations, is not included in our past operations, and may not be indicative of our future operations. Additionally, the shares issued to settle the 100k Milestone Gift are offset by share contributions from Mr. Garcia to Carvana, therefore we expect the impact on shares outstanding to be nearly zero. We believe that excluding it enables us to more effectively evaluate our performance period-over-period and relative to our competitors.

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A reconciliation of the gross profit ex-Gift amounts to each corresponding gross profit amount, which are the most directly comparable GAAP measures and include expenses attributable to the 100k Milestone Gift, and calculations of each gross profit per unit ex-Gift amount are as follows (dollars in thousands, except per unit amounts):

	YEARS ENDED DECEMBER 31,		
	2018	2017	2016
Used vehicle gross profit	$ 94,319	$32,806	$ 5,944
100k Milestone Gift in used vehicle cost of sales	3,870	—	—
Used vehicle gross profit ex-Gift	$ 98,189	$32,806	$ 5,944
Used vehicle unit sales	94,108	44,252	18,761
Used vehicle gross profit per unit ex-Gift	$ 1,043	$ 741	$ 317
Wholesale vehicle gross profit	$ 5,552	$ 1,845	$ 257
100k Milestone Gift in wholesale vehicle cost of sales	133	—	—
Wholesale vehicle gross profit ex-Gift	$ 5,685	$ 1,845	$ 257
Wholesale vehicle unit sales	15,125	6,509	2,651
Wholesale vehicle gross profit per unit ex-Gift	$ 376	$ 283	$ 97
Total gross profit	$196,709	$68,091	$19,197
100k Milestone Gift in total cost of sales	4,003	—	—
Total gross profit ex-Gift	$200,712	$68,091	$19,197
Used vehicle unit sales	94,108	44,252	18,761
Total gross profit per unit ex-Gift	$ 2,133	$ 1,539	$ 1,023

EBITDA EX-GIFT AND EBITDA MARGIN EX-GIFT

EBITDA ex-Gift and EBITDA margin ex-Gift are non-GAAP supplemental measures of operating performance that do not represent and should not be considered an alternative to net loss or cash flow from operations, as determined by GAAP. EBITDA ex-Gift is defined as net loss before interest expense,

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income tax expense, depreciation and amortization expense, and the compensation expense related to the 100k Milestone Gift. EBITDA margin ex-Gift is EBITDA ex-Gift as a percentage of total revenues. We use EBITDA ex-Gift to measure the operating performance of our business and EBITDA Margin ex-Gift to measure our operating performance relative to our total revenues. We believe that EBITDA ex-Gift and EBITDA margin ex-Gift are useful measures to us and to our investors because they exclude certain financial and capital structure items and the expense associated with the 100k Milestone Gift that we do not believe directly reflect our core operations and may not be indicative of our recurring operations, in part because they may vary widely across time and within our industry independent of the performance of our core operations. In particular, we expect the 100k Milestone Gift to be a one-time award program for which we will recognize varying amounts of expense beginning in the second half of 2018 and continuing through the first half of 2020, and therefore we believe the related expense does not reflect our core operations, is not included in our past operations, and may not be indicative of our future operations. Additionally, the shares issued to settle the 100k Milestone Gift are offset by share contributions from Mr. Garcia to Carvana; therefore, we expect the impact on shares outstanding to be nearly zero. We believe that excluding these items enables us to more effectively evaluate our performance period-over-period and relative to our competitors. EBITDA ex-Gift and EBITDA margin ex-Gift may not be comparable to similarly titled measures provided by other companies due to potential differences in methods of calculations. A reconciliation of EBITDA ex-Gift to net loss which includes 100k Milestone Gift expense and is the most directly comparable GAAP measure, and calculation of EBITDA margin ex-Gift is as follows (dollars in thousands):

	YEARS ENDED DECEMBER 31,				
	2018	2017	2016	2015	2014
Net loss	$(254,745)	$(164,316)	$(93,112)	$(36,780)	$(15,238)
Depreciation and amortization expense	23,539	11,568	4,658	2,800	1,706
Interest expense	25,018	7,659	3,587	1,412	108
100k Milestone Gift	11,821	—	—	—	—
EBITDA ex-Gift	$(194,367)	$(145,089)	$(84,867)	$(32,568)	$(13,424)
Total revenues	$1,955,467	$858,870	$365,148	$130,392	$41,679
Net Loss Margin	(13.0)%	(19.1)%	(25.5)%	(28.2)%	(36.6)%
EBITDA Margin ex-Gift	(9.9)%	(16.9)%	(23.2)%	(25.0)%	(32.2)%

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CARVANA

ANNUAL MEETING OF CARVANA CO.

Date: April, 23, 2019
Time: 8:00 A.M (Pacific Daylight Time)
Place: 3419 East University Drive, Phoenix, AZ 85034

Please make your marks like this: ☒ Use dark black pencil or pen only

The Board of Directors recommends that you vote "FOR" the directors in item 1; "FOR" items 2 and 3; and "ONE YEAR" for item 4.

1: election of directors;

	For	Withhold	Directors Recommend ↓
01 J. Danforth Quayle	☐	☐	For
02 Gregory Sullivan	☐	☐	For

	For	Against	Abstain	
2: ratification of the appointment of Grant Thornton LLP as Carvana's independent registered public accounting firm for the year ending December 31, 2019;	☐	☐	☐	For
3: approval, by an advisory vote, of Carvana's executive compensation (i.e., "say-on-pay" proposal)	☐	☐	☐	For

	1 year	2 years	3 years	Abstain	
4: recommendation, by an advisory vote, of the frequency of future advisory votes on executive compensation (i.e., "say-on-pay frequency")	☐	☐	☐	☐	One Year

5: other business as may properly come before the meeting or any adjournment of the meeting.

Authorized Signatures - This section must be completed for your Instructions to be executed.

Please Sign Here — Please Date Here

Please Sign Here — Please Date Here

Please sign exactly as your name(s) appears on your stock certificate. If held in joint tenancy, all persons should sign. Trustees, administrators, etc., should include title and authority. Corporations should provide full name of corporation and title of authorized officer signing the proxy.

← Please separate carefully at the perforation and return just this portion in the envelope provided. ←

CARVANA

Annual Meeting of Carvana Co.
to be held on Tuesday, April 23, 2019
for Holders as of February 25, 2019

This proxy is being solicited on behalf of the Board of Directors

VOTE BY:

INTERNET

Go To
www.proxypush.com/CVNA
- Cast your vote online.
- View Meeting Documents.

OR

TELEPHONE

Call
866-509-2149
- Use any touch-tone telephone.
- **Have your Proxy Card/Voting Instruction Form ready.**
- Follow the simple recorded instructions.

OR

MAIL

- Mark, sign and date your Proxy Card/Voting Instruction Form.
- Detach your Proxy Card/Voting Instruction Form.
- Return your Proxy Card/Voting Instruction Form in the postage-paid envelope provided.

The undersigned hereby appoints Paul Breaux and Jonathan Allred, and each or either of them, as the true and lawful attorneys of the undersigned, with full power of substitution and revocation, and authorizes them, and each of them, to vote all the shares of capital stock of Carvana Co. which the undersigned is entitled to vote at said meeting and any adjournment thereof upon the matters specified and upon such other matters as may be properly brought before the meeting or any adjournment thereof, conferring authority upon such true and lawful attorneys to vote in their discretion on such other matters as may properly come before the meeting and revoking any proxy heretofore given.

THE SHARES REPRESENTED BY THIS PROXY WILL BE VOTED AS DIRECTED OR, IF NO DIRECTION IS GIVEN, SHARES WILL BE VOTED FOR THE ELECTION OF THE DIRECTORS IN ITEM 1; FOR THE PROPOSALS IN ITEMS 2 AND 3; and "ONE YEAR" FOR ITEM 4.

PROXY TABULATOR FOR

CARVANA CO.
P.O. BOX 8016
CARY, NC 27512-9903

Proxy — Carvana Co.
Annual Meeting of Stockholders
Tuesday, April 23, 2019, 8:00 a.m. Pacific Daylight Time
This Proxy is Solicited on Behalf of the Board of Directors

The undersigned appoints Paul Breaux and Jonathan Allred (the "Named Proxies") and each of them as proxies for the undersigned, with full power of substitution, to vote the shares of common stock of Carvana Co., a Delaware corporation ("the Company") the undersigned is entitled to vote at the Annual Meeting of Stockholders of the Company to be held at the 3419 East University Drive, Phoenix, AZ 85034 on Tuesday, April 23 at 8:00 a.m. (PDT) and all adjournments thereof.

The purpose of the Annual Meeting is to take action on the following:

1. to elect two nominees identified in the accompanying proxy statement to serve as directors, as recommended by the Compensation and Nominating Committee of the board of directors of Carvana;
2. to ratify the appointment of Grant Thornton LLP as Carvana's independent registered public accounting firm for the year ending December 31, 2019;
3. to consider the approval, by an advisory vote, of Carvana's executive compensation (i.e., "say-on-pay" proposal)
4. to recommend, by an advisory vote, the frequency of future advisory votes on executive compensation (i.e., "say-on-pay frequency")
5. to transact other business as may properly come before the meeting or any adjournment of the meeting.

The two directors up for re-election are: J. Danforth Quayle and Gregory Sullivan.

The Board of Directors of the Company recommends a vote "FOR" all nominees for director, "FOR" proposals 2 and 3, and a vote of "1 Year" for proposal 4.

This proxy, when properly executed, will be voted in the manner directed herein. If no direction is made, this proxy will be voted "FOR" all nominees for director. In their discretion, the Named Proxies are authorized to vote upon such other matters that may properly come before the Annual Meeting or any adjournment or postponement thereof.

You are encouraged to specify your choice by marking the appropriate box (SEE REVERSE SIDE) but you need not mark any box if you wish to vote in accordance with the Board of Directors' recommendation. The Named Proxies cannot vote your shares unless you sign and return this card.

To attend the meeting and vote your shares in person, please mark this box. ☐

→ Please separate carefully at the perforation and return just this portion in the envelope provided. →

REMEMBERING CAVALIER MAGAZINE

LAUNCHING A MAGAZINE

My friend Michael Simmons, who has been the editor of *National Lampoon*, recalls that *Cavalier* hired fine scribes. A few examples: Thomas Pynchon, Philip Roth, William Saroyan, Isaac Asimov, Theodore Sturgeon. Characters show up from Andy Warhol to Timothy Leary. And the photos of models weren't even soft porn, merely tits and ass.

Cavalier was launched by Fawcett Publications in 1952. Men's magazine *Cavalier* (motto: "For the American Male") was published the year before *Playboy,* to whom it has often been compared. Back in the day, *Cavalier* tried to be seen as slightly hipper, more youthful, and considered a bit more clever than its big name rival. Almost an anti-establishment in *Playboy.* A slogan stated: "Your dad bought *Playboy*, you bought *Cavalier*."

I BECAME A COLUMNIST

I was invited to write a column, named "The Naked Emperor," for *Cavalier*, that was beginning to publish underground writers and artists. They paid me $1,000 a month. My first column, in 1964, was a report on an auction of two-inch

squares from the hotel bedsheets slept on by the Beatles during their first trip to America.

There were 300 screaming young girls, off on a fetishist' s holiday. Obviously, there wouldn' t be enough items to go around, but it was announced that the Beatles' unwashed towels and bed linens were to be cut into two-inch squares and sold for $1 each. The price included a notarized statement of authenticity.

My second column was about Lenny Bruce—titled "Lenny the Lawyer," since he defended himself in trials He was arrested for obscene performances only because there were no blasphemy laws, and he ridiculed religious leaders. I went to the bank and deposited my check, withdrawing half of it in cash, a $500 bill. Lenny was alone in his funky hotel room on Christmas Day when I presented it to him. And, with a large safety pin, Lenny attached the $500 bill to the outside breast pocket of his dungaree jacket.

AFTER JFK ASSASSINATION

In another column of mine, "Jack Ruby and His Dirty Little Secret," it began, "Lenny Bruce once told me how all the night club comics used to gossip about Jack Ruby' s "tattoo of a

lady's *schmutzik* (translate: pussy) in his armpit." If it weren't a fact, I was quite willing to settle for an apocryphal allusion which nevertheless crystallized the entire personality of that alleged murderer who wanted so very much to be liked.

I say *alleged* because upon Ruby's own death. Dallas District Attorney Henry Wade said he would dismiss the murder charge against him, a promise which has since been kept, although no such posthumous grace was ever officially bestowed on Lee Harvey Oswald, considered a lone assassin who shot President Kennedy. See, they grant you retroactive innocence only in the face of innumerable witnesses who were present at the actual event through the legal miracle of inadvertent televised coverage.

Now Jack Ruby's dirty little secret has been forever sealed away in his armpit by the hymen of history. Oh yeah, and at Lenny's funeral, that safety pin was still attached on his denim jacket.

JULES SIEGEL

Two years before Lenny's death, with his permission I published his obituary in my own magazine, *The Realist.* Before the issue went to press, he called his mother and a few others to

let them know it would only be a hoax. The point was that he couldn't get work and his work was his life so he might as well be dead. And if people regretted that they hadn't helped him, well, now they could have a second chance because he was still alive. The obituary evoked inquiries from newspapers, wire services, foreign publications, radio and TV.

"What's the meaning of it?" one editor asked me. "There's a lot of excitement at the city desk."

"That *is* the meaning of it."

A few years later, without my permission, Jules Siegel, the editor of a short-lived magazine, *Cheetah*, published a fake obituary of me. I thought it was funny. An Associated Press reporter called, and I explained that it was a hoax.

"Are you sure?" he asked.

"Of course. I would tell you if I was dead."

Siegel started writing for *Cavalier.* His first assignment was a profile of Sterling Hayden, an actor best known in *Dr, Stranglove or How I Learned to Stop Worrying and Love the Bomb.*

Journalist Adam Ellsworth described Siegel's "Goodbye Surfing, Hello God" with his most famous example of rock journalism, though his most revolutionary was his article, "The Big Beat." It appeared in the *Playboy*-esque *Cavalier* magazine in 1965 and was one of the earliest writings he'd ever seen on the development of rock and roll, from slaves singing in chains on their way to America to Bob Dylan "going electric" at the Newport Folk Festival.

Then Jules' friend, Arthur Kretchmer, became *Cavalier's* managing editor. "When the editorial director later resigned," Kretchmer said, "there was a 24-hour hiatus before the new editorial director arrived." Siegel and Kretchmer had been discussing the possibility of publishing an issue on rock and roll, so to make it happen, Kretchmer went into the office at night and retyped the magazine's schedule to include their ideas.

When the new editorial director started, Kretchmer handed him the schedules and said, "Here's what we're working on." The new editorial director suspected nothing and the rock and roll issue went ahead. Once the laughter died down, Jules talked for a good 25 minutes about some of the ups and downs of his writing career and how hard it is to make a

living as any kind of a writer, let alone a “rock journalist.” and the people who created it, seriously.

Now everybody writes about rock and roll that way. Jules was one of the people who did it first. He died of a heart attack on November 17, 2012 at the age of 77. He was a brilliant author, but neither *Rolling Stone* nor the *New York Times* honored him with an obituary. Not even a fake one.

COMIX

Art Spiegelman tells me his work at *Cavalier* 50 years ago:

I was first invited into the mag to do two full-color comix pages in 1969 (when being printed in color was a Very Big Deal for me as was Getting Paid more than 25 bucks for a drawing), somehow in proximity to a big article on underground comix. It was around the time Vaughn Bode was made a regular contributor to the magazine, They were running some Crumb “Fritz the Cat” pages. All thanks to their hip, laid back and kind editor, Alan LeMond.

I also did some gag cartoons, short strips and occasional illustrations for *Cavalier* (one especially bad drawing for a story by Bruce Jay Friedman, I recall). My work as an apprentice underground cartoonist taking too many drugs was really, really

awful. By the time I'd gotten incrementally better as a cartoonist in the first half of the 1970s I was regularly doing illustrations for soft-core fiction stories in *Cavalier's* low-rent sister mags, *Dude, Gent* and *Nugget* (even wrote a story or two there and got several of my San Francisco comix cronies -- Spain Rodriguez, Bill Griffith and Justin Greene) illustration gigs for those mags as well.

[Note in Wikipedia: *Maus* is a graphic novel by American cartoonist Art Spiegelman, serialized from 1980 to 1991. It depicts Spiegelman interviewing his father about his experiences as a Polish Jew and Holocaust survivor. The work employs postmodernist techniques and represents Jews as mice, Germans as cats, and Poles as pigs. In 1992, *Maus* won a Pulitzer Prize.]

COMiING AND GOING

I wrote some movie reviews for *Cavalier.* I recall that *Midnight Cowboy* was 50 years ago. I always went to two screenings. The first one I would go stoned with magic mushrooms. The second one I took notes. However, I got fired by *Cavalier.*

They declined to publish a particular column—my review of *MASH* as though it were a Busby Berkeley musical called *Gook Killers of 1970*—ostensibly on the grounds of bad taste, but I learned that three wholesalers had told the publisher they were pressured by the FBI and would refuse to distribute *Cavalier* if my name appeared in it.

On top of that, my name was on a list of sixty-five "radical" campus speakers, released by the House Internal Security Committee. The blacklist was published in the *New York Times*, and picked up by newspapers across the country. It might have been a coincidence, but my campus-speaking engagement-bookings stopped abruptly. It felt just like a film.

OH, WELL

It was over for me, but it had been fun—like the issue with only the one large red headline on the *Cavalier* cover: "BEAT 'EM SENSELESS FIRST"—THE FREE SPEECH CONTROVERSY, BY PAUL KRASSNER...

At the University of California in Berkeley on September 1964, Dean Katherine Towle banned posters, easels and tables at the Bancroft-Telegraph Street entrance to the Berkeley campus "because of interference with flow of traffic." She also

reminded student groups of "rules prohibiting the collection of funds and the University facilities for the planning and implementing of off-campus political and social action."

As a result, students held a sit-in lasted till 3 a.m. Next day, ten tables were manned again, and a campus policeman approached one of the tables (manned by the Congress of Racial Equality) where a dozen persons were seated. One was singled out and placed under arrest. But before you could say nonviolent demonstration, the police car was surrounded, its captors reaching as many as 3,000 students. During the late evening, bored fraternity men gathered and tossed lighted cigarettes and eggs on those sitting in the plaza. The demonstrators responded with silence.

Next day, 450 police assembled on campus to remove the cop car and its arrested inhabitant, but an agreement to negotiate was reached and the demonstrators dispersed. One of the folk songs to come out of the Free Speech Movement was *If I Negotiate With You* to the tune of the Beatles' *If I Fell in Love With You.*

Over the next couple of months there was a series of sit-ins and attempted negotiations, and then, on December 2, the infamous Sproul Hall sit-in. It took twelve hours for 800 students

to be arrested by some 600 instructors of a new course called Introductory Police Brutality. These were from the lab notes student took:

"We should do like they do in them foreign countries—beat 'em senseless first, then throw them in the bus."

There was a freshman co-ed at Berkeley who—long after she had forgotten what some professor spouted during an official lecture about Dostoevsky's *Crime and Punishment*—would remember, with perhaps a twinge of frightened pride, learning from a fellow demonstrator that if she planned to go limp when the police arrested her, it would be an act of practical feminine foresight to remove the earrings from her pierced lobes in advance.

So, now in 2019, fighting over free speech has been happening heavily at Berkeley campus again. Meanwhile, Trump grabbed the pussy of the Statue of Liberty. *Cavalier,* anyone?

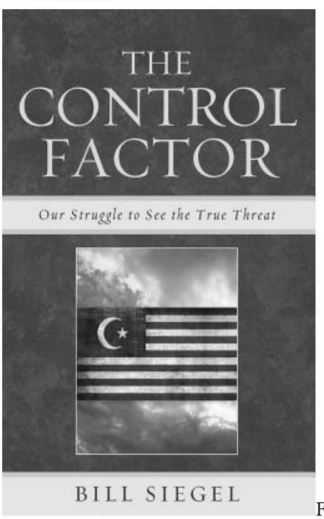
From: Bill Siegel [redacted]
Sent: 2/8/2013 7:40:43 PM
To: Charlotte Abrams [redacted]
Subject: Fro- The Control Factor - Frontpage Magazine interview
Attachments: image001.gif; image002.jpg; image003.png; image004.png; image005.jpg; image006.jpg; image007.png

Bill Siegel hopes this might be of interest to you: http://frontpagemag.com/2013/jamie-glazov/the-control-factor-our-struggle-to-see-the-true-threat/

The Control Factor: Our Struggle to See the True Threat

February 8, 2013 By Jamie Glazov Comments (6)

22
Print This Post



FrontPage Interview's guest today is Bill Siegel, a lawyer and business executive. He has been a producer of several documentary films and assists numerous non-profit organizations. He is the author of The Control Factor: Our Struggle to See the True Threat.

FP: Bill Siegel, welcome to FrontPage Interview.

Congratulations on this brilliant book. It is without question one of the most vital works of our time.

Let's begin with what inspired you to write it.

Siegel: Thanks for having me Jamie. As a young boy born in the mid 1950s, I was fascinated with footage of Hitler and the Third Reich and could never understand how the Jews of the time could not see the evil that seemed so obvious. Not yet appreciative of the benefit of hindsight, I could not comprehend the blindness. Following 9/11, like so many others, I began to study Islam, its history, its current movements, terrorism and so

on. As I would learn one stunning aspect after another, I would discuss them with friends and associates. Rather than confront the facts I would present, they would find one clever way after another to avoid the frightening truth of what America and the West truly face. Their fear appeared obvious to me. I began to catalog many of my friends' different maneuvers to dispel the anxiety that they found so difficult to endure. The more I focused on their mental processes (as well as my own) the more I began to see a structure to the mental endeavor and to understand what I had, as a child, found so difficult to explain.

FP: Tell us about the Control Factor, what you describe as "that effort our minds enga ge in in order to keep us blind" and that "process of a voiding seeing the threats we face." It's also about, as you state, trying to believe that the threat is under our control, when in fact it is not. Kindly enlighten us as to these profound insights you make in terms of the Control Factor.

Siegel: First, let's distinguish the "real world" where real battles are taking place from the mental battlefield which occurs in each of our minds. We tend to believe our perceptions are simply clear realizations of what is "out there" and overlook how much our internal worlds can literally determine what we see. When our internal minds become anxious and sense a loss of "control," they tend to concoct ways to distort our perceptions so as to restore that sense of inner control. I describe the Control Factor as an "active and continuous process" designed to maintain that sense, if not illusion, of control. We natural ly think that our thinking and feeling processes are passive; that they just happen. Yet when faced with truly frightening prospects, the mind is geared to actively distort.

Similarly, the sense of control must be continuously maintained so the Control Factor operates constantly. In turn, the sum of this active and continuous undertaking makes these perceptions all the more familiar and thus seemingly all the more "real." In one sense, the Control Factor is the mechanism of what Andy McCarthy entitled one of his numerous excellent books- willful blindness. The Control Factor is cleverer than we are aware; that is almost tautological as, if our minds are to create ways to keep us in denial, they must out maneuver our conscious thinking.

Since World War II, America has had limited experience with threats coming to the homeland. Most of America's history has been about "over there," where we have always known that if things got too out of hand (e.g. Vietnam) we could always ret urn home. The current generations, for a wide array of reasons, have had virtually no experience with a threat to this land. (The documentary, Generation Zero, is interesting on this point).

Consequently, the process of waking up to such a threat parallels the arc of a typical horror film. In such a film, there is typically a cast of characters surrounding one or two main characters. We in the audience know there is a threat coming – be it a monster, a virus, a psycho killer, an alien, the blob that ate Cincinnati etc. This threat is typically defined by its intent- the singular goal of destroying the characters. Much of the initial exposition shows how the characters first are oblivious to the destruction the threat brings about, then explain it in familiar terms only to finally open their eyes to see that something uniquely terrifying is happening. The next stage usually involves a series of failed attempts to deal with the threat- fr om trying to negotiate with it, to appease it, to coax it, to threaten it with ineffective weapons and so forth. Most of these failings are due to not adequately appreciating the threat for what it truly is and projecting onto it a host of other attributes instead. The final stage generally involves a back-up-against-the-wall decision by whichever characters remain alive. I named this the "turnaround moment" when the character becomes willing to be as ruthless as the threat. That change in mental state is necessary to ensure survival. Ultimately, the storyline is a race for whichever characters remain to wake up fully and use whatever advantages they may still have to beat the threat.

This is the same arc our minds go through in battling our own Control Factors, our own compulsions to deny that which is staring us in the face. Ultimately, the question is whether we will be able to wake up while we still have advantages and give ourselves permis sion to fully fight the battle we are in.

I said ear lier that there is a structure to the Control Factor. To oversimplify, I view it much as a pyramid where on the bottom are the many minute by minute thoughts that are manipulated. I call this level of maneuvers the many "D's" as they include the psychological defenses such as distortion, denial, demonization, deflection, deletion, detachment, delusion, displacement, discolorization and so forth. Layered upon these are moves such

as projection, where we can assign to our Islamic Enemy traits we wish to see in them or introject traits from them into ourselves that we wish not to acknowledge. These maneuvers involve a mixing of identities where we actually lose clarity about who we are and who the enemy is. Projection and introjection are active almost across the board. It is always helpful, for instance, to ask how what the enemy accuses us of is more appropriately descriptive of it. When we add Western Guilt and Shame, our need to be liked, and o ther psychological dimensions, basic thoughts solidify into larger fantasies.

As these narratives ("Our courts will never allow that," "As a superpower we will always be able to win any fight we put our minds to," "Assimilation will ensure Muslims are westernized" …) gain consent from others they tend to guide us deeply and become infused on our policies. Ultimately, what emerges is a relationship we take with our Islamic Enemy that parallels that between an addict and an enabler. Emblematic of this relationship is the "transfer of responsibility" in which we assume responsibility for the enemy's behavior who is addicted to transferring it away from itself. The Control Factor actively maintains this relationship and makes changing that relationship as difficult a chore as any addict finds in breaking his addiction. And just as an addict needs to devote serious effort and con sciousness to his addiction, so must we devote great energy to unders tanding how the Control Factor ultimately sabotages us.

FP: Describe the threat we face in our Islamic enemy. And you talk about the three levels of jihad against us. What are they?

Siegel: Simply stated, our Islamic Enemy seeks the totalitarian domination of Islam throughout the world – Islamic supremacy. It seeks to have the West submit to Islam. Obviously, this does not mean that everybody becomes a Muslim. Islam, in all its varied expressions, permits dhimmis- those Christians, Jews, and some others who are permitted to remain as protected non-Muslims as long as they submit to an inferior status. What is critical is that Shariah (Islamic Law) ultimately rules the world.

Jihad, loosely, is the effort/struggle to see this vision through. The most obvious method of Jihad is through violence; it is the one most familiar to most Westerners and almost all of the Koranic references to Jihad are based in violence. The Violent Jihad includes al-Qaeda and its offshoots as well as other groups that formed around the globe independent of al-Qaeda. It also obviously includes the violence from Islamic nations such as the Islamic Republic of Iran whose constitution specifies such vision. It also includes, however, various militant groups and training camps here in the US as well as ad hoc efforts of individuals.

Since 9/11, there have been something in excess of 15,000 Violent Jihadic attacks across the globe. However, as terrible as this is, we have a tendency in the West to think that the only dimension of threat we face comes from violence. While the Bush administration helped initiate this thinking, the Obama administration has actively abused it by limiting any discussion of the threat we face to al-Qaeda and some other terrorist groups abroad. As frightening as these groups are, we can get some ease from thinking they are a band of "extremists limited in number, weaponry, sophisticati on, and means. Stunningly, Hillary Clinton recently estimated that there are only about 50,000 "homicidal" violent extremists around the world who simply have been able to project power much greater than their number should allow. Here the Control Factor makes the threat appear more easily manageable.

Jihad, however, is pursued in other often even more effective ways which I have grouped into three "levels." A second more insidious level of threat is what the Muslim Brotherhood itself called the "Civilization Jihad." It is the effort to infiltrate all aspects of our society, peacefully according to our laws, in order to later be in position to sabotage and destroy it from the inside. The Civilization Jihadists have learned the culture and rules of the territories they seek to command and use those rules to maneuver—specifically using our freedoms to destroy our freedoms. They use "lawfare" to seek changes in our laws so as to push Shariah into our society. Your readers should read Daniel Pipes and Brooke Goldstein's Lawfare Project material and others to fully appreciate how cancerous this activity has become. This includes intimidating in a variety of ways anyone who speaks out against them or Islam and seeking to squelch our treasured broad right to free speech so as to ultimately prevent any criticisms of Islam. Once criticism of Islam is prohibited, little can stop it from cascading throughout the culture.

The Civilization Jihad includes situating such Jihadists in critical positions in the society, in the government, in the legal system, the military, and elsewhere. It includes the control over university programs that distribute propaganda about Islam and Islamic history which then filters down throughout textbooks for even younger students. It includes control over most of the nation's mosques and local Imams guiding the mess ages engaged Muslims are receiving. Most troublesome are the Muslim g roups (CAIR, ISNA, MSA and others associated and/or joint venture partners with the Muslim Brotherhood) supposedly interested in "outreach" which know how to appear Westernized and interested in the goals of Western Civilization. They have fooled a large part of our authorities and media due in part to their patience and willingness to chip away, one airport prayer room, one frivolous intimidating lawsuit, one Congressman or CIA officer, one mosque, one ruling at a time.

Particularly in the US, given our deep attachment to freedom as well as cultural and psychological tendencies toward diversity, Western guilt and expectations of truthfulness, this effort is devious and difficult to uproot. The Civilization Jihadists present one face to the American public which is completely at odds with their true agenda and how they deal in private. Jamie, you and David and others such as Steve Emerson, Frank Gaffney, Andy McCarthy and others have done s o much to uncover this level of Jihad that your readers should be urged to review as much of their work (including Steve's recent excellent documentary, The Grand Deception, and Frank's important web video course, The Muslim Brotherhood in America) as possible.

Finally, there is a third level – the International Institutional Jihad. Here the most powerful international institutions such as the UN and the Organization of Islamic Cooperation and others seek to push into America from without those changes which are difficult to complete from within. The OIC is the largest Islamic institution in the world. It essentially controls the vote in the UN's General Assembly and thus explains in part the absurd and abject pro-Islamic, anti-Israel thrust of that organizat ion. This level seeks to use the power of Islamic nations to work fro m outside the West to force changes within the West. While there are various conflicts between many of the nations, being Islamic majority states, there is a great deal they agree upon which becomes the focus of these efforts. Just as the Obama administration is beginning to cooperate with international efforts to control gun ownership, so has Hillary Clinton's Istanbul Process become a dangerous step in the effort to restrict speech critical of Islam by norm (or possibly even treaty) when it may not be fully executable by domestic action alone.

I should point out that Stephen Coughlin, the former Pentagon officer who has an important must-see presentation of Islamic Law, uses different names for these same three levels – Jihad, Dawa, and Ummah. Had I seen his work before I wrote my book I would have conformed to his categorizations.

We must learn how powerful language has become on all three levels. Words such as "peace,□ $B!I "freedom," "terrorism," and phrases such as "human rights" have different meanings for us and for our Islamic Enemy. To oversimplify, "peace" is not something for now but that which comes when all the earth is submitting to Islam. In the context of battles, "peace" is at best a temporary ceasefire. "Freedom" is best understood as having the freedom to fully submit to Islam, not to choose whatever beliefs one desires while respecting the same right in others. We've all seen how "human rights" and "terror" really only apply among Muslims, not to non-Muslims. Our enemy fully understands these differences and uses them at all levels to paralyze us.

Look simply at how the phrase "Israeli-Palestinian conflict" has equalized the two parties, making it all the easier to ascribe features of one to the other and view the problem as a simple-to fix division of ass ets into statehoods but for personality problems among the leaders. The simple truth is that this is and has always been a one-sided Arab war against Israel as Ruth Wisse and others have described and, as Bibi Netanyahu made clear, the ONLY state truly at issue here has been the State of Israel that the Arabs have refused for over half a century. Nonetheless, the Control Factor hypnotically abuses the mind's susceptibility to the intricacies of language.

Even the label "Peace Process" has been damaging language. While most focus upon the first word, turning this into a "process" has helped ensure that peace is never obtained. It is more appropriately called the "Extortion Process" because all that results is that violence is used over decades to extract concessions from Israel.

These three levels must be understood for their differences while united by a single goal. While these levels often op erate together and assist each other, we must avoid "level confusion" which the Control Factor employs to curtail our fears. If the Obama narrative is swallowed- that the only threat is the Violent Jihad- we will miss the other contamination fomenting within our borders. We must appreciate how these levels work together and even unite with other forces such as the global Leftist movement that you, Jamie, have described so forcefully in United in Hate.

FP: You write about how we like to talk of "Good Muslims" and how we are always on the eternal search for "moderate" Muslims (Khatami, Mousavi, Abbas, etc), while we stress how the "extremists" are the real problem and how "f ew" they really are. All of this is connected to the Control F actor. Enlighten us.

Siegel: The Control Factor seeks to have us feel in control of the situation. The easiest way to do this is to simply minimize the number of potential enemies. We have been lectured for years about how Islam is a "religion of peace" and that the violence we see (remember that we have already improperly limited the problem to violence) is the product of a small number of "crazies" (remember Hillary Clinton's 50,000) who have distorted Islam. I call this the "Peaceful Muslim Disclaimer" as virtually everyone in the press and government has been bullied into making some statement of the kind to silence those who will pressure them that they are "Islamophobic" and Islam is being attacked. (These are the Islam hustlers who operate on the same principles that black race hustlers so effectively used to extort concessions over the last six decades or so).

Nobody has done any real work to support this proposition, nor is it clear exactly how it would be tested. My view is that the grammar "Islam is x" is itself problematic because Islam has expressed itself throughout history in a variety of fashions. It is more useful to talk in terms of how seriously engaged with Islam, the Koran and other texts, a Muslim is. What is significant is how Muslims today are using Islam and most of those who are in power either throughout a large territory or within a small community tend toward, if not fully advocate, the very supremacist ideas that we try to tell ourselves are reserved for the few "extremists." Presumably most Germans did not wish to see all Nazi atrocities carried out but in the end they fell in line because they had to. Those our politicians and press call the "extremists" are in one sense more accurately the "good" Muslims who ar e following their Islamic beliefs dutifully.

FP: Tell us how Western shame and guilt play into all of this.

Siegel: One of the dirty little secrets the Control Factor preys upon is that if we believe we control something we can comfort ourselves that we can change it. Remember the horror film- the threat has one purpose and that is to destroy you. You can not change it, talk it out of it, teach it alternatives or otherwise. That is what makes it so inherently frightening. If we can convince ourselves that we caused the threat to act the way it does we can maintain the secret hope that we can change it. Consequently, there is a tremendous attraction to blaming ourselves for the Islamic Enemy's behavior. And we see this power in our readily accepting responsibility for terror- because of our occupation, our greedy quest for oil, our failure to extend a hand of "engagement," Israel's building settlements, our making videos that defa me Mohammed and so on. Again, the relationship is defined by the enemy blaming us for his actions and our accepting such responsibility.

Shelby Steele has written brilliantly about what he calls "white guilt" and outlines how whites during the 60′s and thereafter were pressured into a transaction whereby in order to re-obtain a sense of moral authority they accepted blame for the condition of blacks and behaved as if guilty. Blacks were able to extract great concessions and whites were able to view themselves as morally restored and redeemed. At a certain point, however, the behavior takes on a life of its own and the narratives become deeply embedded in the culture and, as we can see today, difficult to uproot.

Western guilt is an extension of Steele's notion. President Obama's confessionals to the Arab world admitting that America has made "mistakes" and was not born a colonial pow er express this same tendency to appease through guilt. Hillary Clint on's "reset" with Russia conveyed the same submissive request for a more acceptable response. In being guilty we presume the other party will recognize our contrition and respond in like kind. One of the Control Factor's most devastating moves is employed- presuming the other is just like us and will respond the way we would. This is frequently how an enabler justifies his continuous support for an addict. The problem, however is that our Islamic Enemy is NOT like us and will not respond in like kind.

Rather, as we repeatedly refuse to learn, appeasement invites more abuse from an enemy. This becomes the "game of guilt;" it tends to expand to greater and greater consequences. Paradoxically, psychological defenses tend to create the very outcomes they seek to eliminate and it is no different here. It is a game we love to play but, unfortunately, the game gives us no rules for how to end it.

All beha vior is instructive. That is, we teach others how to treat us. The game of guilt, along with other Control Factor tools, teaches our Enemy it is winning and to continue playing.

FP: The reason Nidal Hasan was able to perpetrate his murder spree at Fort Hood is precisely because of our Control Factor. Please connect the dots for our readers.

Siegel: Just as I used to look at Hitler when I was young and be amazed that no one could see what he was about, in retrospect the same applies to Hasan. It is precisely all the elements of the Control Factor that could allow this man, a Soldier of Allah, to be positioned as he was. He was blatantly voicing his Islamist views and Jihadi intent including, even, an essay recommending the "painful liquidation" of non-Muslims. Yet, in the Army of all places, the Control Factor operated to allow and even foster his work. Even after the murders, we cont inue the denial by calling it "workplace violence." He is the Civilization-Violent Jihad combo! And we continue to enable the same infiltration elsewhere.

FP: Tell our readers about "The Project" and "Explanatory Memorandum." These are realities that serve as great threats to the Control Factor, right?

Siegel: These are separate sets of documents that outline the Muslim Brotherhood's goals and plans underlying the Civilization Jihad. The former was discovered in Europe and extends globally. The 1991 Explanatory Memorandum emerged in 2008 from the Holy Land Foundation trial and describes the Brotherhood's work in America as a "Civilization-Jihadist Process with all the word means" and "a kind of grand Jihad in eliminating and destroying the Western civilization from within and 'sabotaging' its miserable house by their own hands and the hands of the believers so that it is eliminated and God's religion is made victorious over all other religions."

Much as the communists of the Soviet Union had formulated in the 1950s a detailed long term plan to destroy America (many of the effects of which we are seeing of late including destroying the nuclear family, secularizing the nation, feminizing men …) these documents identify many strategies to infiltrate while eroding the foundations of our civilization in order to transform it into an Islamic one. The Control Factor has many ingenious ways to convince us that this is ridiculous, that our courts and system would never allow such a thing, that one is racist or "Islamophobic," if not insane, for even thinking this is real. And just as with the communists, time is plentiful. Even more so with our Islamic Enemy, a multi-decade plan is short term. It is not critical that a seriou sly engaged Muslim lives to see the result. It is critical, more correctly a duty, however, that he carries on his Jihad. Patrick Poole and The Center for Security Policy's Team B Report, Shariah: The Threat to America, are excellent sources for your readers to pursue these documents.

FP: And so what you call an "Inner Jihad" has to start. It's our, as you say, mandatory "addiction treatment." Please explain.

Siegel: The "Inner Jihad" is the effort we must undertake to gain control over our Control Factors. There is a famous Hadith in which Mohammad, returning from a successful battle, essentially says that the physical fight was the "lesser Jihad" and it is time to then attend to the "greater Jihad・・・・・・癆・銓纈釶・矚・跂・艨蜴齢・・・・・銓纈釶・瘰鞳・・鵺・・・・・闔・・蜴謇鈑・鈔・・肬鶯莅・蓍跂・葹・悲粡・・癈・繞・聲踈繻・・蛹蝴繖・・黶・・癆・ぢ"Jihad" is not violent, it is useful to us as a symbol of the vicious effort we must take internally against our own Control Factor tendencies.

As I said earlier, the Control Factor is "active" and "continuous" so we must constantly monitor and combat it. Like "Whack-a-Mole," just as we may think we have addressed it, another variation pops right up. I use the terms "addict" and "enabler" because we truly need a form of rehab to break the habitual power of the Control Factor and because our relationship with our Islamic Enemy is very much like that between a typical addict and his enabler. And just as it is so difficult for an addict to kick his habit, so does the enabler act essentially addicted to his behavior and find it so difficult to change. At its core, the relati onship involves the

transfer of responsibility for our Islamic Enemy's hate and resultant actions onto us with our response framed essentially as an effort to do what we can to try to address the Enemy's grievance. (Your book, United in Hate, describes this addiction to hate in detail.

The key to the Inner Jihad is to learn to transfer responsibility for our Islamic Enemy's hate and resultant actions back to it and take responsibility back for our own situation. We must learn all we can about the enemy. We must unwind our inappropriate projections and introjections and rediscover who we are and are not. We must speak up. We must support those Muslims who promote expressions of Islam that are consistent with our principles. And we must stalk the C ontrol Factor, constantly be on guard for its intrusion. This is an individual endeavor as each of our Control Factors uses its own methods. The book gives plenty of examples of each maneuver discussed but it is important for each of us to discover the unique workings of his own mind. That takes the work of the Inner Jihad.

FP: Share with our readers what you mean by the "Turnaround Moment."

Siegel: There is a moment in typical horror films where the central characters have been pushed to their limit. They then change and fully embrace the willingness to be as ruthless as the threat they face. No more moral high ground; no more futile attempts to ignore or change the threat's essence. As Lee Harris described in The Suicide of Reason, it is the willingness o r license to be (not necessarily actually being) as ruthless that is critical. It is a mental state that sheds all the prior counter-productive efforts at denial to finally clearly focus on the threat faced. Part of the Inner Jihad is to reach that Turnaround Moment sooner rather than later.

FP: You suggest that "mirroring" should be used as part of our arsenal. Tell us about it.

Siegel: Mirroring is a literal approach to transferring back to the addict responsibility that we have been inappropriately accepting. Critical to the addict/enabler relationship is asymmetry. Like the addict, the enemy uses a less limiting set of rules than we do. The enemy typically initiates aggression while we respond only. Mirroring means that we demonstrate our willingness to act symmetrically, to be governed by the same rules. It is stunning how much is accomplished when one's attitude simply is clear that he will do what is necessary; often not much else is needed as the addict or enemy realizes the game is fundamentally changed. But other times action is absolutely needed. Demonstrating that we are not afraid to treat the enemy as it treats us carries great meaning. Imagine (international law aside) if Israel announced that from now on it will mirror Hamas such that if civilian populations are targeted by bombs from Gaza, Israel will do the same (it is accused of such anyway). The population might finally rethink and take responsibility for its privilege of voting its leaders. As stated earlier, all behavior is instructive and when we mirror we teach the other the effects of his behavior.

Conversely, some situations demand that we assert asymmetry; those cases where it is necessary to highlight our differences with the enemy. Just this week, an disingenuous report was issued by an NGO drawing an equivalence between Palestinian and Israe li schoolbooks claiming that both sides have their relativistic " · narratives." Yet, as the Palestinian Media Watch's website has demonstrated for years, there is nothing in the West anywhere comparable to the hatred spewed daily by the Palestinian Authority, including through its education system. It is interesting to note that while the US State Department initially funded the "study,"- in what appears to be an attempt to sanitize the PA's record so that the US can continue to fund the PA against the spirit of US law- Hillary Clinton has a difficult time escaping her conclusion as Senator in 2007 that these schoolbooks along with other media "profoundly poison(s) the minds of these children." It is most important that we do not succumb to this type of use of symmetry that distorts the profound differences between us and the enemy.

Essentially, we are not clear as a nation, participating in a world with international rules, how to bes t fight this enemy. The first act of any rehab is to acknowledge that we do not know how nor are we yet competent to stop our addictions. This is not a book about policy. In fact, the "right" policies are unlikely to emerge until a critical mass has meaningfully dealt with their Control Factors and share a common perspective. We like to look at our history and assume a single perspective throughout but the truth is that we had to learn how to respond to Pearl Harbor, the Nazis, the Cold War etc. The same applies here. Our press promotes "elites" who are tasked with acting as if they possess the "true wisdom" to deal with our threats but the truth is we do not know nor are

we equipped to marshal enough of our population to agree just yet. The sooner we learn, however, the less we will suffer. Mirroring has always been a key component of those lessons.

I have been encouraged by some recent acts that have begu n to nip at the asymmetry. For years, the language of "feeling s" had been reserved for our enemy while we were limited to that of "action;" we would do terrible acts that would cause bad feelings in the enemy which would then serve to justify whatever response it made. It had always been a question of the harsh insensitive acts Westerners do against Muslims and the resulting hurt, loss, shame etc. that Muslims experience. The Ground Zero Mosque incident, however, broke new ground because all of a sudden non-Muslims' feelings became the focus and were cast as resulting from Muslim acts. Another example was seen in how quickly the attempt to blame the Benghazi murders on the video about Mohammad fell apart. Just as large corporations eventually learned to turn away from shakedown attempts from race baiters, we are beginning to learn to demand symmetry through mirroring. A word of caution: When enablers change their behavior and demand symmetrical rules f or the addict, the latter typically initially erupts with great resistance. This is a stage we must be prepared to tolerate and fully withstand as it creates the only real chance for the addict to finally change. It is critical, therefore, that when we finally engage in mirroring that we be prepared to see it through completion.

FP: What if we fail to engage in our own Inner Jihad and the Control Factor stays firmly in place?

Siegel: Critical to the Inner Jihad is the realization that our civilization is fragile; not to be taken for granted. Our demands for multi-culturalism and diversity have bumped heads with the simple paradox that tolerating the intolerant leads to extinction. Tolerating the intolerant is perhaps the most crystalline version of asymmetry we have accepted. Seriously engaged Muslims MUST place the Koran above all law while in America, the Constitution ranks supreme. As Omar Ahmad , founder of CAIR, reputedly said, "Islam isn't in Amer ica to be equal to any other faith, but to become dominant. The Koran is the highest authority in America and Islam is the only accepted religion on Earth." Who makes law- the people or Allah? While the Control Factor constantly seeks for some accommodation between the two, this conflict CAN NOT be negotiated. Only one can survive not because we have declared "war" but because our Islamic Enemy has. That is, perhaps, the lesson we will most need to fully learn, one way or another. We will eventually hit a Turnaround Moment as a nation and if enough of us are not truly prepared to fight and continue to be controlled by our delusions, we will lose. If we truly seek to win, it is better to get there sooner while we have advantages than later.

FP: Bill Siegel, thank you for joining FrontPage Interview.

And thank you for writing this superb and most important book.

We encourage all o f our readers to get their hands on The Control Factor: Our Struggle to See the True Threat and to read it!

Editor's note: To watch *The Glazov Gang*'s recent discussion about the Muslim Brotherhood's infiltration of the United States and the Obama administration, see this week's episode below:

Freedom Center pamphlets now available on Kindle: Click here.

Filed Under: Daily Mailer, FrontPage Tagged With: Denial, Islam, muslim brotherhood, Obama, Siegel, The Control Factor

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About Jamie Glazov

Jamie Glazov is Frontpage Magazine's editor. He holds a Ph.D. in History with a specialty in Russian, U.S. and Canadian foreign policy. He is the author of the critically acclaimed and best-selling, ***United in Hate: The Left's Romance with Tyranny and Terror.*** His new book is ***High No on For America.*** He is the host of Frontpage's television show, ***The Glazov Gang,*** and he can be reached at jamieglazov11@gmail.com. Visit his sit at ***JamieGlazov.com***.

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AdinaK 86p · *11 hours ago*

The war being waged has two components - mental and physical. The mental side is a minefield of constructs, deeply implanted within generations of Americans, and its PC chickens are coming home to roost. So much so, millions of Americans (westerners) cannot break free of its shackles. But it is not as if these mental chains magically appe ared. Far from it - http://adinakutnicki.com/2012/11/26/the-death-of-...

In addition, the fault-lines of democracy allowed for the most retrograde forces, on this planet, to infiltrate and penetrate the body politic- http://adinakutnicki.com/2012/09/02/the-subversio...

IF the mental and physical constraints are not immediately removed, it is a given that western civilization will fall. Cause and effect.
Adina Kutnicki, Israel - http://adinakutnicki.com/about/
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dmw · *30 minutes ago*

And I would think one "phy sical constraint" is to not let them in in the first place. By & quot;them" I mean those who have allegiance to a socio-political system disguised as a religion that seeks world dominance by man imposed methodology/effort -- unlike Judaism and Christianity properly understood. If we are to "believe", the world already has a King and does not need a Caliph.
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MikeWood · *6 hours ago*

Ground-breaking, brilliant. There are absolutely essentially lessons to be learned from this. Buy this book, read it, study it, and lend it to your friends and colleagues. Do it.
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lambsev77 54p · *4 hours ago*

The fall of Rome... The fall of the 3rd Reich... The fall of Western Civilization...

oooooh... Scary!

How about the fall of humankind recorded in Genesis Chapter 3 and following?

We're ALL GONNA DIE! But will you rise with Christ?
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@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadel phia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

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@WolfyJam · *2 hours ago*

I read the Control factor and it was excellent. I wish more people would realize that our country is at its most vulnerable than ever in its history. the jihadis have basically taken over the inner cities. Islam's love for violence coupled with ignorance and narcissim are a recipe for disaster. I hope Americans wake up in time to save their future. I'm not optimistic though. I think its over but still I fight on.

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From: Bill Siegel [redacted]
Sent: 2/8/2013 8:10:04 PM
To: jeevacation@gmail.com
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview
Attachments: image001.gif; image002.jpg; image003.png; image004.png; image005.jpg; image006.jpg; image007.png

Importance: High

You ok? I became friendly with shirley maclaine last year and went to her ranch in sante fe. I may go back and remembered you own half the ranch land there or something. Do you still like it there?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 14:58:01 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

I already rad it. congragulations hope to see you soon

On Fri, Feb 8, 2013 at 3:40 PM, Bill Siegel <[redacted]> wrote:

Bill Siegel hopes this might be of interest to you: http://frontpagemag.com/2013/jamie-glazov/the-control-factor-our-struggle-to-see-the-true-threat/

The Control Factor: Our Struggle to See the True Threat

February 8, 2013 By Jamie Glazov Comments (6)

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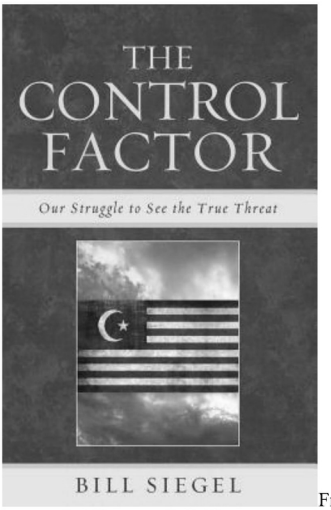

FrontPage Interview's guest today is Bill Siegel, a lawyer and business executive. He has been a producer of several documentary films and assists numerous non-profit organizations. He is the author of The Control Factor: Our Struggle to See the True Threat.

FP: Bill Siegel, welcome to FrontPage Interview.

Congratulations on this brilliant book. It is without question one of the most vital works of our time.

Let's begin with what inspired you to write it.

Siegel: Thanks for having me Jamie. As a young boy born in the mid 1950s, I was fascinated with footage of Hitler and the Third Reich and could never understand how the Jews of the time could not see the evil that seemed so obvious. Not yet appreciative of the benefit of hindsight, I could not comprehend the blindness. Following 9/11, like so many others, I began to study Islam, its history, its current movements, terrorism and so on. As I would learn one stunning aspect after another, I would discuss them with friends and associates. Rather than confront the facts I would present, they would find one clever way after another to avoid the frightening truth of what America and the West truly face. Their fear appeared obvious to me. I began to catalog many of my friends' different maneuvers to dispel the anxiety that they found so difficult to endure. The more I focused on their mental processes (as well as my own) the more I began to see a structure to the mental endeavor and to understand what I had, as a child, found so difficult to explain.

FP: Tell us about the Control Factor, what you describe as "that effort our minds enga ge in in order to keep us blind" and that "process of a voiding seeing the threats we face." It's also about, as you state, trying to believe that the threat is under our control, when in fact it is not. Kindly enlighten us as to these profound insights you make in terms of the Control Factor.

Siegel: First, let's distinguish the "real world" where real battles are taking place from the mental battlefield which occurs in each of our minds. We tend to believe our perceptions are simply clear realizations of what is "out there" and overlook how much our internal worlds can literally determine what we see. When our internal minds become anxious and sense a loss of "control," they tend to concoct ways to distort our perceptions so as to restore that sense of inner control. I describe the Control Factor as an "active and continuous process" designed to maintain that sense, if not illusion, of control. We natural ly think that our thinking and feeling processes are passive; that they just happen. Yet when faced with truly frightening prospects, the mind is geared to actively distort.

Similarly, the sense of control must be continuously maintained so the Control Factor operates constantly. In turn, the sum of this active and continuous undertaking makes these perceptions all the more familiar and thus seemingly all the more "real." In one sense, the Control Factor is the mechanism of what Andy McCarthy entitled one of his numerous excellent books- willful blindness. The Control Factor is cleverer than we are aware; that is almost tautological as, if our minds are to create ways to keep us in denial, they must out maneuver our conscious thinking.

Since World War II, America has had limited experience with threats coming to the homeland. Most of America's history has been about "over there," where we have always known that if things got too out of hand (e.g. Vietnam) we could always ret urn home. The current generations, for a wide array of reasons, have had virtually no experience with a threat to this land. (The documentary, Generation Zero, is interesting on this point).

Consequently, the process of waking up to such a threat parallels the arc of a typical horror film. In such a film, there is typically a cast of characters surrounding one or two main characters. We in the audience know there is a threat coming – be it a monster, a virus, a psycho killer, an alien, the blob that ate Cincinnati etc. This threat is typically defined by its intent- the singular goal of destroying the characters. Much of the initial exposition shows how the characters first are oblivious to the destruction the threat brings about, then explain it in familiar terms only to finally open their eyes to see that something uniquely terrifying is happening. The next stage usually involves a series of failed attempts to deal with the threat- fr om trying to negotiate with it, to appease it, to coax it, to threaten it with ineffective weapons and so forth. Most of these failings are due to not adequately appreciating the threat for what it truly is and projecting onto it a host of other attributes instead. The final stage generally involves a back-up-against-the-wall decision by whichever characters remain alive. I named this the "turnaround moment" when the character becomes willing to be as ruthless as the threat. That change in mental state is necessary to ensure survival. Ultimately, the storyline is a race for whichever characters remain to wake up fully and use whatever advantages they may still have to beat the threat.

This is the same arc our minds go through in battling our own Control Factors, our own compulsions to deny that which is staring us in the face. Ultimately, the question is whether we will be able to wake up while we still have advantages and give ourselves permis sion to fully fight the battle we are in.

I said ear lier that there is a structure to the Control Factor. To oversimplify, I view it much as a pyramid where on the bottom are the many minute by minute thoughts that are manipulated. I call this level of maneuvers the many "D's" as they include the psychological defenses such as distortion, denial, demonization, deflection, deletion, detachment, delusion, displacement, discolorization and so forth. Layered upon these are moves such as projection, where we can assign to our Islamic Enemy traits we wish to see in them or introject traits from them into ourselves that we wish not to acknowledge. These maneuvers involve a mixing of identities where we actually lose clarity about who we are and who the enemy is. Projection and introjection are active almost across the board. It is always helpful, for instance, to ask how what the enemy accuses us of is more appropriately descriptive of it. When we add Western Guilt and Shame, our need to be liked, and o ther psychological dimensions, basic thoughts solidify into larger fantasies.

As these narratives ("Our courts will never allow that," "As a superpower we will always be able to win any fight we put our minds to," "Assimilation will ensure Muslims are westernized" …) gain consent from others they tend to guide us deeply and become infused on our policies. Ultimately, what emerges is a relationship we take with our Islamic Enemy that parallels that between an addict and an enabler. Emblematic of this relationship is the "transfer of responsibility" in which we assume responsibility for the enemy's behavior who is addicted to transferring it away from itself. The Control Factor actively maintains this relationship and makes changing that relationship as difficult a chore as any addict finds in breaking his addiction. And just as an addict needs to devote serious effort and con sciousness to his addiction, so must we devote great energy to unders tanding how the Control Factor ultimately sabotages us.

FP: Describe the threat we face in our Islamic enemy. And you talk about the three levels of jihad against us. What are they?

Siegel: Simply stated, our Islamic Enemy seeks the totalitarian domination of Islam throughout the world – Islamic supremacy. It seeks to have the West submit to Islam. Obviously, this does not mean that everybody becomes a Muslim. Islam, in all its varied expressions, permits dhimmis- those Christians, Jews, and some others who are permitted to remain as protected non-Muslims as long as they submit to an inferior status. What is critical is that Shariah (Islamic Law) ultimately rules the world.

Jihad, loosely, is the effort/struggle to see this vision through. The most obvious method of Jihad is through violence; it is the one most familiar to most Westerners and almost all of the Koranic references to Jihad are based in violence. The Violent Jihad includes al-Qaeda and its offshoots as well as other groups that formed around the globe independent of al-Qaeda. It also obviously includes the violence from Islamic nations such as the Islamic Republic of Iran whose constitution specifies such vision. It also includes, however, various militant groups and training camps here in the US as well as ad hoc efforts of individuals.

Since 9/11, there have been something in excess of 15,000 Violent Jihadic attacks across the globe. However, as terrible as this is, we have a tendency in the West to think that the only dimension of threat we face comes from violence. While the Bush administration helped initiate this thinking, the Obama administration has actively abused it by limiting any discussion of the threat we face to al-Qaeda and some other terrorist groups abroad. As frightening as these groups are, we can get some ease from thinking they are a band of "extremists limited in number, weaponry, sophisticati on, and means. Stunningly, Hillary Clinton recently estimated that there are only about 50,000 "homicidal" violent extremists around the world who simply have been able to project power much greater than their number should allow. Here the Control Factor makes the threat appear more easily manageable.

Jihad, however, is pursued in other often even more effective ways which I have grouped into three "levels." A second more insidious level of threat is what the Muslim Brotherhood itself called the "Civilization Jihad." It is the effort to infiltrate all aspects of our society, peacefully according to our laws, in order to later be in position to sabotage and destroy it from the inside. The Civilization Jihadists have learned the culture and rules of the territories they seek to command and use those rules to maneuver—specifically using our freedoms to destroy our freedoms. They use "lawfare" to seek changes in our laws so as to push Shariah into our society. Your readers should read Daniel Pipes and Brooke Goldstein's Lawfare Project material and others to fully appreciate how cancerous this activity has become. This includes intimidating in a variety of ways anyone who speaks out against them or Islam and seeking to squelch our treasured broad right to free speech so as to ultimately prevent any criticisms of Islam. Once criticism of Islam is prohibited, little can stop it from cascading throughout the culture.

The Civilization Jihad includes situating such Jihadists in critical positions in the society, in the government, in the legal system, the military, and elsewhere. It includes the control over university programs that distribute propaganda about Islam and Islamic history which then filters down throughout textbooks for even younger students. It includes control over most of the nation's mosques and local Imams guiding the mess ages engaged Muslims are receiving. Most troublesome are the Muslim g roups (CAIR, ISNA, MSA and others associated and/or joint venture partners with the Muslim Brotherhood) supposedly interested in "outreach" which know how to appear Westernized and interested in the goals of Western Civilization. They have fooled a large part of our authorities and media due in part to their patience and willingness to chip away, one airport prayer room, one frivolous intimidating lawsuit, one Congressman or CIA officer, one mosque, one ruling at a time.

Particularly in the US, given our deep attachment to freedom as well as cultural and psychological tendencies toward diversity, Western guilt and expectations of truthfulness, this effort is devious and difficult to uproot. The Civilization Jihadists present one face to the American public which is completely at odds with their true agenda and how they deal in private. Jamie, you and David and others such as Steve Emerson, Frank Gaffney, Andy McCarthy and others have done s o much to uncover this level of Jihad that your readers should be urged to review as much of their work (including Steve's recent excellent documentary, The Grand Deception, and Frank's important web video course, The Muslim Brotherhood in America) as possible.

Finally, there is a third level – the International Institutional Jihad. Here the most powerful international institutions such as the UN and the Organization of Islamic Cooperation and others seek to push into America from without those changes which are difficult to complete from within. The OIC is the largest Islamic

institution in the world. It essentially controls the vote in the UN's General Assembly and thus explains in part the absurd and abject pro-Islamic, anti-Israel thrust of that organizat ion. This level seeks to use the power of Islamic nations to work fro m outside the West to force changes within the West. While there are various conflicts between many of the nations, being Islamic majority states, there is a great deal they agree upon which becomes the focus of these efforts. Just as the Obama administration is beginning to cooperate with international efforts to control gun ownership, so has Hillary Clinton's Istanbul Process become a dangerous step in the effort to restrict speech critical of Islam by norm (or possibly even treaty) when it may not be fully executable by domestic action alone.

I should point out that Stephen Coughlin, the former Pentagon officer who has an important must-see presentation of Islamic Law, uses different names for these same three levels – Jihad, Dawa, and Ummah. Had I seen his work before I wrote my book I would have conformed to his categorizations.

We must learn how powerful language has become on all three levels. Words such as "peace,[illegible] $B!I "freedom," "terrorism," and phrases such as "human rights" have different meanings for us and for our Islamic Enemy. To oversimplify, "peace" is not something for now but that which comes when all the earth is submitting to Islam. In the context of battles, "peace" is at best a temporary ceasefire. "Freedom" is best understood as having the freedom to fully submit to Islam, not to choose whatever beliefs one desires while respecting the same right in others. We've all seen how "human rights" and "terror" really only apply among Muslims, not to non-Muslims. Our enemy fully understands these differences and uses them at all levels to paralyze us.

Look simply at how the phrase "Israeli-Palestinian conflict" has equalized the two parties, making it all the easier to ascribe features of one to the other and view the problem as a simple-to fix division of ass ets into statehoods but for personality problems among the leaders. The simple truth is that this is and has always been a one-sided Arab war against Israel as Ruth Wisse and others have described and, as Bibi Netanyahu made clear, the ONLY state truly at issue here has been the State of Israel that the Arabs have refused for over half a century. Nonetheless, the Control Factor hypnotically abuses the mind's susceptibility to the intricacies of language.

Even the label "Peace Process" has been damaging language. While most focus upon the first word, turning this into a "process" has helped ensure that peace is never obtained. It is more appropriately called the "Extortion Process" because all that results is that violence is used over decades to extract concessions from Israel.

These three levels must be understood for their differences while united by a single goal. While these levels often op erate together and assist each other, we must avoid "level confusion" which the Control Factor employs to curtail our fears. If the Obama narrative is swallowed- that the only threat is the Violent Jihad- we will miss the other contamination fomenting within our borders. We must appreciate how these levels work together and even unite with other forces such as the global Leftist movement that you, Jamie, have described so forcefully in United in Hate.

FP: You write about how we like to talk of "Good Muslims" and how we are always on the eternal search for "moderate" Muslims (Khatami, Mousavi, Abbas, etc), while we stress how the "extremists" are the real problem and how "f ew" they really are. All of this is connected to the Control F actor. Enlighten us.

Siegel: The Control Factor seeks to have us feel in control of the situation. The easiest way to do this is to simply minimize the number of potential enemies. We have been lectured for years about how Islam is a "religion of peace" and that the violence we see (remember that we have already improperly limited the problem to violence) is the product of a small number of "crazies" (remember Hillary Clinton's 50,000) who have distorted Islam. I call this the "Peaceful Muslim Disclaimer" as virtually everyone in the press and government has been bullied into making some statement of the kind to silence those who will pressure them that they are "Islamophobic" and Islam is being attacked. (These are the Islam hustlers who operate on the same principles that black race hustlers so effectively used to extort concessions over the last six decades or so).

Nobody has done any real work to support this proposition, nor is it clear exactly how it would be tested. My view is that the grammar "Islam is x" is itself problematic because Islam has expressed itself throughout history in a variety of fashions. It is more useful to talk in terms of how seriously engaged with Islam, the Koran and other texts, a Muslim is. What is significant is how Muslims today are using Islam and most of those who are in power either throughout a large territory or within a small community tend toward, if not fully advocate, the very supremacist ideas that we try to tell ourselves are reserved for the few "extremists." Presumably most Germans did not wish to see all Nazi atrocities carried out but in the end they fell in line because they had to. Those our politicians and press call the "extremists" are in one sense more accurately the "good" Muslims who ar e following their Islamic beliefs dutifully.

FP: Tell us how Western shame and guilt play into all of this.

Siegel: One of the dirty little secrets the Control Factor preys upon is that if we believe we control something we can comfort ourselves that we can change it. Remember the horror film- the threat has one purpose and that is to destroy you. You can not change it, talk it out of it, teach it alternatives or otherwise. That is what makes it so inherently frightening. If we can convince ourselves that we caused the threat to act the way it does we can maintain the secret hope that we can change it. Consequently, there is a tremendous attraction to blaming ourselves for the Islamic Enemy's behavior. And we see this power in our readily accepting responsibility for terror- because of our occupation, our greedy quest for oil, our failure to extend a hand of "engagement," Israel's building settlements, our making videos that defa me Mohammed and so on. Again, the relationship is defined by the enemy blaming us for his actions and our accepting such responsibility.

Shelby Steele has written brilliantly about what he calls "white guilt" and outlines how whites during the 60′s and thereafter were pressured into a transaction whereby in order to re-obtain a sense of moral authority they accepted blame for the condition of blacks and behaved as if guilty. Blacks were able to extract great concessions and whites were able to view themselves as morally restored and redeemed. At a certain point, however, the behavior takes on a life of its own and the narratives become deeply embedded in the culture and, as we can see today, difficult to uproot.

Western guilt is an extension of Steele's notion. President Obama's confessionals to the Arab world admitting that America has made "mistakes" and was not born a colonial pow er express this same tendency to appease through guilt. Hillary Clint on's "reset" with Russia conveyed the same submissive request for a more acceptable response. In being guilty we presume the other party will recognize our contrition and respond in like kind. One of the Control Factor's most devastating moves is employed- presuming the other is just like us and will respond the way we would. This is frequently how an enabler justifies his continuous support for an addict. The problem, however is that our Islamic Enemy is NOT like us and will not respond in like kind. Rather, as we repeatedly refuse to learn, appeasement invites more abuse from an enemy. This becomes the "game of guilt;" it tends to expand to greater and greater consequences. Paradoxically, psychological defenses tend to create the very outcomes they seek to eliminate and it is no different here. It is a game we love to play but, unfortunately, the game gives us no rules for how to end it.

All beha vior is instructive. That is, we teach others how to treat us. The game of guilt, along with other Control Factor tools, teaches our Enemy it is winning and to continue playing.

FP: The reason Nidal Hasan was able to perpetrate his murder spree at Fort Hood is precisely because of our Control Factor. Please connect the dots for our readers.

Siegel: Just as I used to look at Hitler when I was young and be amazed that no one could see what he was about, in retrospect the same applies to Hasan. It is precisely all the elements of the Control Factor that could allow this man, a Soldier of Allah, to be positioned as he was. He was blatantly voicing his Islamist views and Jihadi intent including, even, an essay recommending the "painful liquidation" of non-Muslims. Yet, in the Army of all places, the Control Factor operated to allow and even foster his work. Even after the murders, we cont inue the denial by calling it "workplace violence." He is the Civilization-Violent Jihad combo! And we continue to enable the same infiltration elsewhere.

FP: Tell our readers about "The Project" and "Explanatory Memorandum." These are realities that serve as great threats to the Control Factor, right?

Siegel: These are separate sets of documents that outline the Muslim Brotherhood's goals and plans underlying the Civilization Jihad. The former was discovered in Europe and extends globally. The 1991 Explanatory Memorandum emerged in 2008 from the Holy Land Foundation trial and describes the Brotherhood's work in America as a "Civilization-Jihadist Process with all the word means" and "a kind of grand Jihad in eliminating and destroying the Western civilization from within and 'sabotaging' its miserable house by their own hands and the hands of the believers so that it is eliminated and God's religion is made victorious over all other religions."

Much as the communists of the Soviet Union had formulated in the 1950s a detailed long term plan to destroy America (many of the effects of which we are seeing of late including destroying the nuclear family, secularizing the nation, feminizing men …) these documents identify many strategies to infiltrate while eroding the foundations of our civilization in order to transform it into an Islamic one. The Control Factor has many ingenious ways to convince us that this is ridiculous, that our courts and system would never allow such a thing, that one is racist or "Islamophobic," if not insane, for even thinking this is real. And just as with the communists, time is plentiful. Even more so with our Islamic Enemy, a multi-decade plan is short term. It is not critical that a seriou sly engaged Muslim lives to see the result. It is critical, more correctly a duty, however, that he carries on his Jihad. Patrick Poole and The Center for Security Policy's Team B Report, Shariah: The Threat to America, are excellent sources for your readers to pursue these documents.

FP: And so what you call an "Inner Jihad" has to start. It's our, as you say, mandatory "addiction treatment." Please explain.

Siegel: The "Inner Jihad" is the effort we must undertake to gain control over our Control Factors. There is a famous Hadith in which Mohammad, returning from a successful battle, essentially says that the physical fight was the "lesser Jihad" and it is time to then attend to the "greater Jihad ◆"- that internal battle against our own internal appetites, lusts, wrong thinking and so forth. While that Hadith has been falsely utilized to say that "Jihad" is not violent, it is useful to us as a symbol of the vicious effort we must take internally against our own Control Factor tendencies.

As I said earlier, the Control Factor is "active" and "continuous" so we must constantly monitor and combat it. Like "Whack-a-Mole," just as we may think we have addressed it, another variation pops right up. I use the terms "addict" and "enabler" because we truly need a form of rehab to break the habitual power of the Control Factor and because our relationship with our Islamic Enemy is very much like that between a typical addict and his enabler. And just as it is so difficult for an addict to kick his habit, so does the enabler act essentially addicted to his behavior and find it so difficult to change. At its core, the relati onship involves the transfer of responsibility for our Islamic Enemy's hate and resultant actions onto us with our response framed essentially as an effort to do what we can to try to address the Enemy's grievance. (Your book, United in Hate, describes this addiction to hate in detail.

The key to the Inner Jihad is to learn to transfer responsibility for our Islamic Enemy's hate and resultant actions back to it and take responsibility back for our own situation. We must learn all we can about the enemy. We must unwind our inappropriate projections and introjections and rediscover who we are and are not. We must speak up. We must support those Muslims who promote expressions of Islam that are consistent with our principles. And we must stalk the C ontrol Factor, constantly be on guard for its intrusion. This is an individual endeavor as each of our Control Factors uses its own methods. The book gives plenty of examples of each maneuver discussed but it is important for each of us to discover the unique workings of his own mind. That takes the work of the Inner Jihad.

FP: Share with our readers what you mean by the "Turnaround Moment."

Siegel: There is a moment in typical horror films where the central characters have been pushed to their limit. They then change and fully embrace the willingness to be as ruthless as the threat they face. No more moral high ground; no more futile attempts to ignore or change the threat's essence. As Lee Harris described in The Suicide of Reason, it is the willingness o r license to be (not necessarily actually being) as ruthless that is critical. It is a mental state that sheds all the prior counter-productive efforts at denial to finally clearly focus on the threat faced. Part of the Inner Jihad is to reach that Turnaround Moment sooner rather than later.

FP: You suggest that "mirroring" should be used as part of our arsenal. Tell us about it.

Siegel: Mirroring is a literal approach to transferring back to the addict responsibility that we have been inappropriately accepting. Critical to the addict/enabler relationship is asymmetry. Like the addict, the enemy uses a less limiting set of rules than we do. The enemy typically initiates aggression while we respond only. Mirroring means that we demonstrate our willingness to act symmetrically, to be governed by the same rules. It is stunning how much is accomplished when one's attitude simply is clear that he will do what is necessary; often not much else is needed as the addict or enemy realizes the game is fundamentally changed. But other times action is absolutely needed. Demonstrating that we are not afraid to treat the enemy as it treats us carries great meaning. Imagine (international law aside) if Israel announced that from now on it will mirror Hamas such that if civilian populations are targeted by bombs from Gaza, Israel will do the same (it is accused of such anyway). The population might finally rethink and take responsibility for its privilege of voting its leaders. As stated earlier, all behavior is instructive and when we mirror we teach the other the effects of his behavior.

Conversely, some situations demand that we assert asymmetry; those cases where it is necessary to highlight our differences with the enemy. Just this week, an disingenuous report was issued by an NGO drawing an equivalence between Palestinian and Israe li schoolbooks claiming that both sides have their relativistic " narratives." Yet, as the Palestinian Media Watch's website has demonstrated for years, there is nothing in the West anywhere comparable to the hatred spewed daily by the Palestinian Authority, including through its education system. It is interesting to note that while the US State Department initially funded the "study,"- in what appears to be an attempt to sanitize the PA's record so that the US can continue to fund the PA against the spirit of US law- Hillary Clinton has a difficult time escaping her conclusion as Senator in 2007 that these schoolbooks along with other media "profoundly poison(s) the minds of these children." It is most important that we do not succumb to this type of use of symmetry that distorts the profound differences between us and the enemy.

Essentially, we are not clear as a nation, participating in a world with international rules, how to bes t fight this enemy. The first act of any rehab is to acknowledge that we do not know how nor are we yet competent to stop our addictions. This is not a book about policy. In fact, the "right" policies are unlikely to emerge until a critical mass has meaningfully dealt with their Control Factors and share a common perspective. We like to look at our history and assume a single perspective throughout but the truth is that we had to learn how to respond to Pearl Harbor, the Nazis, the Cold War etc. The same applies here. Our press promotes "elites" who are tasked with acting as if they possess the "true wisdom" to deal with our threats but the truth is we do not know nor are we equipped to marshal enough of our population to agree just yet. The sooner we learn, however, the less we will suffer. Mirroring has always been a key component of those lessons.

I have been encouraged by some recent acts that have begu n to nip at the asymmetry. For years, the language of "feeling s" had been reserved for our enemy while we were limited to that of "action;" we would do terrible acts that would cause bad feelings in the enemy which would then serve to justify whatever response it made. It had always been a question of the harsh insensitive acts Westerners do against Muslims and the resulting hurt, loss, shame etc. that Muslims experience. The Ground Zero Mosque incident, however, broke new ground because all of a sudden non-Muslims' feelings became the focus and were cast as resulting from Muslim acts. Another example was seen in how quickly the attempt to blame the Benghazi murders on the video about Mohammad fell apart. Just as large corporations eventually learned to turn away from shakedown attempts from race baiters, we are beginning to learn to demand symmetry through mirroring. A word of caution: When enablers change their behavior and demand symmetrical rules f or the addict, the latter typically initially erupts with great resistance. This is a stage we must be prepared to tolerate and fully withstand as it creates the only real chance for the addict to finally change. It is critical, therefore, that when we finally engage in mirroring that we be prepared to see it through completion.

FP: What if we fail to engage in our own Inner Jihad and the Control Factor stays firmly in place?

Siegel: Critical to the Inner Jihad is the realization that our civilization is fragile; not to be taken for granted. Our demands for multi-culturalism and diversity have bumped heads with the simple paradox that tolerating the intolerant leads to extinction. Tolerating the intolerant is perhaps the most crystalline version of asymmetry we have accepted. Seriously engaged Muslims MUST place the Koran above all law while in America, the

Constitution ranks supreme. As Omar Ahmad , founder of CAIR, reputedly said, "Islam isn't in Amer ica to be equal to any other faith, but to become dominant. The Koran is the highest authority in America and Islam is the only accepted religion on Earth." Who makes law- the people or Allah? While the Control Factor constantly seeks for some accommodation between the two, this conflict CAN NOT be negotiated. Only one can survive not because we have declared "war" but because our Islamic Enemy has. That is, perhaps, the lesson we will most need to fully learn, one way or another. We will eventually hit a Turnaround Moment as a nation and if enough of us are not truly prepared to fight and continue to be controlled by our delusions, we will lose. If we truly seek to win, it is better to get there sooner while we have advantages than later.

FP: Bill Siegel, thank you for joining FrontPage Interview.

And thank you for writing this superb and most important book.

We encourage all o f our readers to get their hands on The Control Factor: Our Struggle to See the True Threat and to read it!

Editor's note: To watch *The Glazov Gang*'s recent discussion about the Muslim Brotherhood's infiltration of the United States and the Obama administration, see this week's episode below:

Freedom Center pamphlets now available on Kindle: Click here.

Filed Under: Daily Mailer, FrontPage Tagged With: Denial, Islam, muslim brotherhood, Obama, Siegel, The Control Factor

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About Jamie Glazov

Jamie Glazov is Frontpage Magazine's editor. He holds a Ph.D. in History with a specialty in Russian, U.S. and Canadian foreign policy. He is the author of the critically acclaimed and best-selling, ***United in Hate: The Left's Romance with Tyranny and Terror.*** His new book is ***High No on For America.*** He is the host of Frontpage's television show, ***The Glazov Gang,*** and he can be reached at jamieglazov11@gmail.com. Visit his sit at ***JamieGlazov.com***.

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AdinaK 86p · *11 hours ago*

The war being waged has two components - mental and physical. The mental side is a minefield of constructs, deeply implanted within generations of Americans, and its PC chickens are coming home to roost. So much so, millions of Americans (westerners) cannot break free of its shackles. But it is not as if these mental chains magically appe ared. Far from it - http://adinakutnicki.com/2012/11/26/the-death-of-...

In addition, the fault-lines of democracy allowed for the most retrograde forces, on this planet, to infiltrate and penetrate the body politic- http://adinakutnicki.com/2012/09/02/the-subversio...

IF the mental and physical constraints are not immediately removed, it is a given that western civilization will fall. Cause and effect.
Adina Kutnicki, Israel - http://adinakutnicki.com/about/

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1 reply · *active 30 minutes ago*

0

dmw · *30 minutes ago*

And I would think one "phy sical constraint" is to not let them in in the first place. By & quot;them" I mean those who have allegiance to a socio-political system disguised as a religion that seeks world dominance by man imposed methodology/effort -- unlike Judaism and Christianity properly understood. If we are to "believe", the world already has a King and does not need a Caliph.

Report

Reply

0

MikeWood · *6 hours ago*

Ground-breaking, brilliant. There are absolutely essentially lessons to be learned from this. Buy this book, read it, study it, and lend it to your friends and colleagues. Do it.

Report

Reply

0

lambsev77 54p · *4 hours ago*

The fall of Rome... The fall of the 3rd Reich... The fall of Western Civilization...

oooooh... Scary!

How about the fall of humankind recorded in Genesis Chapter 3 and following?

We're ALL GONNA DIE! But will you rise with Christ?

Report

Reply

+1

@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadel phia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

Report

Reply

+1

@WolfyJam · *2 hours ago*

I read the Control factor and it was excellent. I wish more people would realize that our country is at its most vulnerable than ever in its history. the jihadis have basically taken over the inner cities. Islam's love for violence coupled with ignorance and narcissim are a recipe for disaster. I hope Americans wake up in time to save their future. I'm not optimistic though. I think its over but still I fight on.

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3. No ad hominem attacks.
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Jeffrey Epstein
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From: Bill Siegel [[redacted]
Sent: 2/8/2013 8:48:50 PM
To: jeevacation@gmail.com
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview
Attachments: image001.gif; image002.jpg; image003.png; image004.png; image005.jpg; image006.jpg; image007.png

Importance: High

I will let you know when I go back. Do you know her?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 15:16:44 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

great. place.. when will you go.. did you get married? i m between alber and santa fe,, zorrro ranch, you can google earth it.

On Fri, Feb 8, 2013 at 4:10 PM, Bill Siegel <[redacted]> wrote:

You ok? I became friendly with shirley maclaine last year and went to her ranch in sante fe. I may go back and remembered you own half the ranch land there or something. Do you still like it there?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 14:58:01 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

I already rad it. congragulations hope to see you soon

On Fri, Feb 8, 2013 at 3:40 PM, Bill Siegel <[redacted]> wrote:

Bill Siegel hopes this might be of interest to you: http://frontpagemag.com/2013/jamie-glazov/the-control-factor-our-struggle-to-see-the-true-threat/

The Control Factor: Our Struggle to See the True Threat

February 8, 2013 By Jamie Glazov Comments (6)

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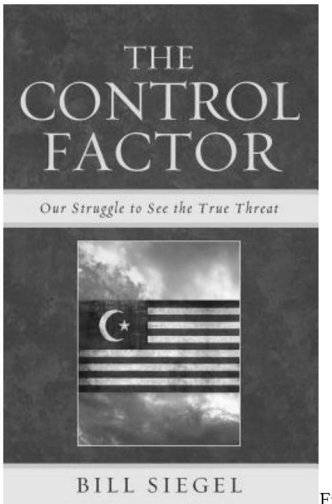

FrontPage Interview's guest today is Bill Siegel, a lawyer and business executive. He has been a producer of several documentary films and assists numerous non-profit organizations. He is the author of The Control Factor: Our Struggle to See the True Threat.

FP: Bill Siegel, welcome to FrontPage Interview.

Congratulations on this brilliant book. It is without question one of the most vital works of our time.

Let's begin with what inspired you to write it.

Siegel: Thanks for having me Jamie. As a young boy born in the mid 1950s, I was fascinated with footage of Hitler and the Third Reich and could never understand how the Jews of the time could not see the evil that seemed so obvious. Not yet appreciative of the benefit of hindsight, I could not comprehend the blindness. Following 9/11, like so many others, I began to study Islam, its history, its current movements, terrorism and so on. As I would learn one stunning aspect after another, I would discuss them with friends and associates. Rather than confront the facts I would present, they would find one clever way after another to avoid the frightening truth of what America and the West truly face. Their fear appeared obvious to me. I began to catalog many of my friends' different maneuvers to dispel the anxiety that they found so difficult to endure. The more I focused on their mental processes (as well as my own) the more I began to see a structure to the mental endeavor and to understand what I had, as a child, found so difficult to explain.

FP: Tell us about the Control Factor, what you describe as "that effort our minds enga ge in in order to keep us blind" and that "process of a voiding seeing the threats we face." It's also about, as you state, trying to believe that the threat is under our control, when in fact it is not. Kindly enlighten us as to these profound insights you make in terms of the Control Factor.

Siegel: First, let's distinguish the "real world" where real battles are taking place from the mental battlefield which occurs in each of our minds. We tend to believe our perceptions are simply clear realizations of what is "out there" and overlook how much our internal worlds can literally determine what we see. When our internal minds become anxious and sense a loss of "control," they tend to concoct ways to distort our perceptions so as to restore that sense of inner control. I describe the Control Factor as an "active and continuous process" designed to maintain that sense, if not illusion, of control. We natural ly think that our thinking and feeling processes are passive; that they just happen. Yet when faced with truly frightening prospects, the mind is geared to actively distort.

Similarly, the sense of control must be continuously maintained so the Control Factor operates constantly. In turn, the sum of this active and continuous undertaking makes these perceptions all the more familiar and thus seemingly all the more "real." In one sense, the Control Factor is the mechanism of what Andy McCarthy entitled one of his numerous excellent books- willful blindness. The Control Factor is cleverer than we are aware; that is almost tautological as, if our minds are to create ways to keep us in denial, they must out maneuver our conscious thinking.

Since World War II, America has had limited experience with threats coming to the homeland. Most of America's history has been about "over there," where we have always known that if things got too out of hand (e.g. Vietnam) we could always ret urn home. The current generations, for a wide array of reasons, have had virtually no experience with a threat to this land. (The documentary, Generation Zero, is interesting on this point).

Consequently, the process of waking up to such a threat parallels the arc of a typical horror film. In such a film, there is typically a cast of characters surrounding one or two main characters. We in the audience know there is a threat coming – be it a monster, a virus, a psycho killer, an alien, the blob that ate Cincinnati etc. This threat is typically defined by its intent- the singular goal of destroying the characters. Much of the initial exposition shows how the characters first are oblivious to the destruction the threat brings about, then explain it in familiar terms only to finally open their eyes to see that something uniquely terrifying is happening. The next stage usually involves a series of failed attempts to deal with the threat- fr om trying to negotiate with it, to appease it, to coax it, to threaten it with ineffective weapons and so forth. Most of these failings are due to not adequately appreciating the threat for what it truly is and projecting onto it a host of other attributes instead. The final stage generally involves a back-up-against-the-wall decision by whichever characters remain alive. I named this the "turnaround moment" when the character becomes willing to be as ruthless as the threat. That change in mental state is necessary to ensure survival. Ultimately, the storyline is a race for whichever characters remain to wake up fully and use whatever advantages they may still have to beat the threat.

This is the same arc our minds go through in battling our own Control Factors, our own compulsions to deny that which is staring us in the face. Ultimately, the question is whether we will be able to wake up while we still have advantages and give ourselves permis sion to fully fight the battle we are in.

I said ear lier that there is a structure to the Control Factor. To oversimplify, I view it much as a pyramid where on the bottom are the many minute by minute thoughts that are manipulated. I call this level of maneuvers the many "D's" as they include the psychological defenses such as distortion, denial, demonization, deflection, deletion, detachment, delusion, displacement, discolorization and so forth. Layered upon these are moves such as projection, where we can assign to our Islamic Enemy traits we wish to see in them or introject traits from them into ourselves that we wish not to acknowledge. These maneuvers involve a mixing of identities where we actually lose clarity about who we are and who the enemy is. Projection and introjection are active almost across the board. It is always helpful, for instance, to ask how what the enemy accuses us of is more appropriately descriptive of it. When we add Western Guilt and Shame, our need to be liked, and o ther psychological dimensions, basic thoughts solidify into larger fantasies.

As these narratives ("Our courts will never allow that," "As a superpower we will always be able to win any fight we put our minds to," "Assimilation will ensure Muslims are westernized" …) gain consent from others they tend to guide us deeply and become infused on our policies. Ultimately, what emerges is a relationship we take with our Islamic Enemy that parallels that between an addict and an enabler. Emblematic of this relationship is the "transfer of responsibility" in which we assume responsibility for the enemy's behavior who is addicted to transferring it away from itself. The Control Factor actively maintains this relationship and makes changing that relationship as difficult a chore as any addict finds in breaking his addiction. And just as an addict needs to devote serious effort and con sciousness to his addiction, so must we devote great energy to unders tanding how the Control Factor ultimately sabotages us.

FP: Describe the threat we face in our Islamic enemy. And you talk about the three levels of jihad against us. What are they?

Siegel: Simply stated, our Islamic Enemy seeks the totalitarian domination of Islam throughout the world – Islamic supremacy. It seeks to have the West submit to Islam. Obviously, this does not mean that everybody becomes a Muslim. Islam, in all its varied expressions, permits dhimmis- those Christians, Jews, and some others who are permitted to remain as protected non-Muslims as long as they submit to an inferior status. What is critical is that Shariah (Islamic Law) ultimately rules the world.

Jihad, loosely, is the effort/struggle to see this vision through. The most obvious method of Jihad is through violence; it is the one most familiar to most Westerners and almost all of the Koranic references to Jihad are based in violence. The Violent Jihad includes al-Qaeda and its offshoots as well as other groups that formed around the globe independent of al-Qaeda. It also obviously includes the violence from Islamic nations such as the Islamic Republic of Iran whose constitution specifies such vision. It also includes, however, various militant groups and training camps here in the US as well as ad hoc efforts of individuals.

Since 9/11, there have been something in excess of 15,000 Violent Jihadic attacks across the globe. However, as terrible as this is, we have a tendency in the West to think that the only dimension of threat we face comes from violence. While the Bush administration helped initiate this thinking, the Obama administration has actively abused it by limiting any discussion of the threat we face to al-Qaeda and some other terrorist groups abroad. As frightening as these groups are, we can get some ease from thinking they are a band of "extremists limited in number, weaponry, sophisticati on, and means. Stunningly, Hillary Clinton recently estimated that there are only about 50,000 "homicidal" violent extremists around the world who simply have been able to project power much greater than their number should allow. Here the Control Factor makes the threat appear more easily manageable.

Jihad, however, is pursued in other often even more effective ways which I have grouped into three "levels." A second more insidious level of threat is what the Muslim Brotherhood itself called the "Civilization Jihad." It is the effort to infiltrate all aspects of our society, peacefully according to our laws, in order to later be in position to sabotage and destroy it from the inside. The Civilization Jihadists have learned the culture and rules of the territories they seek to command and use those rules to maneuver—specifically using our freedoms to destroy our freedoms. They use "lawfare" to seek changes in our laws so as to push Shariah into our society. Your readers should read Daniel Pipes and Brooke Goldstein's Lawfare Project material and others to fully appreciate how cancerous this activity has become. This includes intimidating in a variety of ways anyone who speaks out against them or Islam and seeking to squelch our treasured broad right to free speech so as to ultimately prevent any criticisms of Islam. Once criticism of Islam is prohibited, little can stop it from cascading throughout the culture.

The Civilization Jihad includes situating such Jihadists in critical positions in the society, in the government, in the legal system, the military, and elsewhere. It includes the control over university programs that distribute propaganda about Islam and Islamic history which then filters down throughout textbooks for even younger students. It includes control over most of the nation's mosques and local Imams guiding the mess ages engaged Muslims are receiving. Most troublesome are the Muslim g roups (CAIR, ISNA, MSA and others associated and/or joint venture partners with the Muslim Brotherhood) supposedly interested in "outreach" which know how to appear Westernized and interested in the goals of Western Civilization. They have fooled a large part of our authorities and media due in part to their patience and willingness to chip away, one airport prayer room, one frivolous intimidating lawsuit, one Congressman or CIA officer, one mosque, one ruling at a time.

Particularly in the US, given our deep attachment to freedom as well as cultural and psychological tendencies toward diversity, Western guilt and expectations of truthfulness, this effort is devious and difficult to uproot. The Civilization Jihadists present one face to the American public which is completely at odds with their true agenda and how they deal in private. Jamie, you and David and others such as Steve Emerson, Frank Gaffney, Andy McCarthy and others have done s o much to uncover this level of Jihad that your readers should be urged to review as much of their work (including Steve's recent excellent documentary, The Grand Deception, and Frank's important web video course, The Muslim Brotherhood in America) as possible.

Finally, there is a third level – the International Institutional Jihad. Here the most powerful international institutions such as the UN and the Organization of Islamic Cooperation and others seek to push into America

from without those changes which are difficult to complete from within. The OIC is the largest Islamic institution in the world. It essentially controls the vote in the UN's General Assembly and thus explains in part the absurd and abject pro-Islamic, anti-Israel thrust of that organizat ion. This level seeks to use the power of Islamic nations to work fro m outside the West to force changes within the West. While there are various conflicts between many of the nations, being Islamic majority states, there is a great deal they agree upon which becomes the focus of these efforts. Just as the Obama administration is beginning to cooperate with international efforts to control gun ownership, so has Hillary Clinton's Istanbul Process become a dangerous step in the effort to restrict speech critical of Islam by norm (or possibly even treaty) when it may not be fully executable by domestic action alone.

I should point out that Stephen Coughlin, the former Pentagon officer who has an important must-see presentation of Islamic Law, uses different names for these same three levels – Jihad, Dawa, and Ummah. Had I seen his work before I wrote my book I would have conformed to his categorizations.

We must learn how powerful language has become on all three levels. Words such as "peace,[illegible] $B!I "freedom," "terrorism," and phrases such as "human rights" have different meanings for us and for our Islamic Enemy. To oversimplify, "peace" is not something for now but that which comes when all the earth is submitting to Islam. In the context of battles, "peace" is at best a temporary ceasefire. "Freedom" is best understood as having the freedom to fully submit to Islam, not to choose whatever beliefs one desires while respecting the same right in others. We've all seen how "human rights" and "terror" really only apply among Muslims, not to non-Muslims. Our enemy fully understands these differences and uses them at all levels to paralyze us.

Look simply at how the phrase "Israeli-Palestinian conflict" has equalized the two parties, making it all the easier to ascribe features of one to the other and view the problem as a simple-to fix division of ass ets into statehoods but for personality problems among the leaders. The simple truth is that this is and has always been a one-sided Arab war against Israel as Ruth Wisse and others have described and, as Bibi Netanyahu made clear, the ONLY state truly at issue here has been the State of Israel that the Arabs have refused for over half a century. Nonetheless, the Control Factor hypnotically abuses the mind's susceptibility to the intricacies of language.

Even the label "Peace Process" has been damaging language. While most focus upon the first word, turning this into a "process" has helped ensure that peace is never obtained. It is more appropriately called the "Extortion Process" because all that results is that violence is used over decades to extract concessions from Israel.

These three levels must be understood for their differences while united by a single goal. While these levels often op erate together and assist each other, we must avoid "level confusion" which the Control Factor employs to curtail our fears. If the Obama narrative is swallowed- that the only threat is the Violent Jihad- we will miss the other contamination fomenting within our borders. We must appreciate how these levels work together and even unite with other forces such as the global Leftist movement that you, Jamie, have described so forcefully in United in Hate.

FP: You write about how we like to talk of "Good Muslims" and how we are always on the eternal search for "moderate" Muslims (Khatami, Mousavi, Abbas, etc), while we stress how the "extremists" are the real problem and how "f ew" they really are. All of this is connected to the Control F actor. Enlighten us.

Siegel: The Control Factor seeks to have us feel in control of the situation. The easiest way to do this is to simply minimize the number of potential enemies. We have been lectured for years about how Islam is a "religion of peace" and that the violence we see (remember that we have already improperly limited the problem to violence) is the product of a small number of "crazies" (remember Hillary Clinton's 50,000) who have distorted Islam. I call this the "Peaceful Muslim Disclaimer" as virtually everyone in the press and government has been bullied into making some statement of the kind to silence those who will pressure them that they are "Islamophobic" and Islam is being attacked. (These are the Islam hustlers who operate on the same principles that black race hustlers so effectively used to extort concessions over the last six decades or so).

Nobody has done any real work to support this proposition, nor is it clear exactly how it would be tested. My view is that the grammar "Islam is x" is itself problematic because Islam has expressed itself throughout history in a variety of fashions. It is more useful to talk in terms of how seriously engaged with Islam, the Koran and other texts, a Muslim is. What is significant is how Muslims today are using Islam and most of those who are in power either throughout a large territory or within a small community tend toward, if not fully advocate, the very supremacist ideas that we try to tell ourselves are reserved for the few "extremists." Presumably most Germans did not wish to see all Nazi atrocities carried out but in the end they fell in line because they had to. Those our politicians and press call the "extremists" are in one sense more accurately the "good" Muslims who ar e following their Islamic beliefs dutifully.

FP: Tell us how Western shame and guilt play into all of this.

Siegel: One of the dirty little secrets the Control Factor preys upon is that if we believe we control something we can comfort ourselves that we can change it. Remember the horror film- the threat has one purpose and that is to destroy you. You can not change it, talk it out of it, teach it alternatives or otherwise. That is what makes it so inherently frightening. If we can convince ourselves that we caused the threat to act the way it does we can maintain the secret hope that we can change it. Consequently, there is a tremendous attraction to blaming ourselves for the Islamic Enemy's behavior. And we see this power in our readily accepting responsibility for terror- because of our occupation, our greedy quest for oil, our failure to extend a hand of "engagement," Israel's building settlements, our making videos that defa me Mohammed and so on. Again, the relationship is defined by the enemy blaming us for his actions and our accepting such responsibility.

Shelby Steele has written brilliantly about what he calls "white guilt" and outlines how whites during the 60's and thereafter were pressured into a transaction whereby in order to re-obtain a sense of moral authority they accepted blame for the condition of blacks and behaved as if guilty. Blacks were able to extract great concessions and whites were able to view themselves as morally restored and redeemed. At a certain point, however, the behavior takes on a life of its own and the narratives become deeply embedded in the culture and, as we can see today, difficult to uproot.

Western guilt is an extension of Steele's notion. President Obama's confessionals to the Arab world admitting that America has made "mistakes" and was not born a colonial pow er express this same tendency to appease through guilt. Hillary Clint on's "reset" with Russia conveyed the same submissive request for a more acceptable response. In being guilty we presume the other party will recognize our contrition and respond in like kind. One of the Control Factor's most devastating moves is employed- presuming the other is just like us and will respond the way we would. This is frequently how an enabler justifies his continuous support for an addict. The problem, however is that our Islamic Enemy is NOT like us and will not respond in like kind. Rather, as we repeatedly refuse to learn, appeasement invites more abuse from an enemy. This becomes the "game of guilt;" it tends to expand to greater and greater consequences. Paradoxically, psychological defenses tend to create the very outcomes they seek to eliminate and it is no different here. It is a game we love to play but, unfortunately, the game gives us no rules for how to end it.

All beha vior is instructive. That is, we teach others how to treat us. The game of guilt, along with other Control Factor tools, teaches our Enemy it is winning and to continue playing.

FP: The reason Nidal Hasan was able to perpetrate his murder spree at Fort Hood is precisely because of our Control Factor. Please connect the dots for our readers.

Siegel: Just as I used to look at Hitler when I was young and be amazed that no one could see what he was about, in retrospect the same applies to Hasan. It is precisely all the elements of the Control Factor that could allow this man, a Soldier of Allah, to be positioned as he was. He was blatantly voicing his Islamist views and Jihadi intent including, even, an essay recommending the "painful liquidation" of non-Muslims. Yet, in the Army of all places, the Control Factor operated to allow and even foster his work. Even after the murders, we cont inue the denial by calling it "workplace violence." He is the Civilization-Violent Jihad combo! And we continue to enable the same infiltration elsewhere.

FP: Tell our readers about "The Project" and "Explanatory Memorandum." These are realities that serve as great threats to the Control Factor, right?

Siegel: These are separate sets of documents that outline the Muslim Brotherhood's goals and plans underlying the Civilization Jihad. The former was discovered in Europe and extends globally. The 1991 Explanatory Memorandum emerged in 2008 from the Holy Land Foundation trial and describes the Brotherhood's work in America as a "Civilization-Jihadist Process with all the word means" and "a kind of grand Jihad in eliminating and destroying the Western civilization from within and 'sabotaging' its miserable house by their own hands and the hands of the believers so that it is eliminated and God's religion is made victorious over all other religions."

Much as the communists of the Soviet Union had formulated in the 1950s a detailed long term plan to destroy America (many of the effects of which we are seeing of late including destroying the nuclear family, secularizing the nation, feminizing men …) these documents identify many strategies to infiltrate while eroding the foundations of our civilization in order to transform it into an Islamic one. The Control Factor has many ingenious ways to convince us that this is ridiculous, that our courts and system would never allow such a thing, that one is racist or "Islamophobic," if not insane, for even thinking this is real. And just as with the communists, time is plentiful. Even more so with our Islamic Enemy, a multi-decade plan is short term. It is not critical that a seriou sly engaged Muslim lives to see the result. It is critical, more correctly a duty, however, that he carries on his Jihad. Patrick Poole and The Center for Security Policy's Team B Report, Shariah: The Threat to America, are excellent sources for your readers to pursue these documents.

FP: And so what you call an "Inner Jihad" has to start. It's our, as you say, mandatory "addiction treatment." Please explain.

Siegel: The "Inner Jihad" is the effort we must undertake to gain control over our Control Factors. There is a famous Hadith in which Mohammad, returning from a successful battle, essentially says that the physical fight was the "lesser Jihad" and it is time to then attend to the "greater Jihad "- that internal battle against our own internal appetites, lusts, wrong thinking and so forth. While that Hadith has been falsely utilized to say that "Jihad" is not violent, it is useful to us as a symbol of the vicious effort we must take internally against our own Control Factor tendencies.

As I said earlier, the Control Factor is "active" and "continuous" so we must constantly monitor and combat it. Like "Whack-a-Mole," just as we may think we have addressed it, another variation pops right up. I use the terms "addict" and "enabler" because we truly need a form of rehab to break the habitual power of the Control Factor and because our relationship with our Islamic Enemy is very much like that between a typical addict and his enabler. And just as it is so difficult for an addict to kick his habit, so does the enabler act essentially addicted to his behavior and find it so difficult to change. At its core, the relati onship involves the transfer of responsibility for our Islamic Enemy's hate and resultant actions onto us with our response framed essentially as an effort to do what we can to try to address the Enemy's grievance. (Your book, United in Hate, describes this addiction to hate in detail.

The key to the Inner Jihad is to learn to transfer responsibility for our Islamic Enemy's hate and resultant actions back to it and take responsibility back for our own situation. We must learn all we can about the enemy. We must unwind our inappropriate projections and introjections and rediscover who we are and are not. We must speak up. We must support those Muslims who promote expressions of Islam that are consistent with our principles. And we must stalk the C ontrol Factor, constantly be on guard for its intrusion. This is an individual endeavor as each of our Control Factors uses its own methods. The book gives plenty of examples of each maneuver discussed but it is important for each of us to discover the unique workings of his own mind. That takes the work of the Inner Jihad.

FP: Share with our readers what you mean by the "Turnaround Moment."

Siegel: There is a moment in typical horror films where the central characters have been pushed to their limit. They then change and fully embrace the willingness to be as ruthless as the threat they face. No more moral high ground; no more futile attempts to ignore or change the threat's essence. As Lee Harris described in The Suicide of Reason, it is the willingness o r license to be (not necessarily actually being) as ruthless that is critical. It is a mental state that sheds all the prior counter-productive efforts at denial to finally clearly focus on the threat faced. Part of the Inner Jihad is to reach that Turnaround Moment sooner rather than later.

FP: You suggest that "mirroring" should be used as part of our arsenal. Tell us about it.

Siegel: Mirroring is a literal approach to transferring back to the addict responsibility that we have been inappropriately accepting. Critical to the addict/enabler relationship is asymmetry. Like the addict, the enemy uses a less limiting set of rules than we do. The enemy typically initiates aggression while we respond only. Mirroring means that we demonstrate our willingness to act symmetrically, to be governed by the same rules. It is stunning how much is accomplished when one's attitude simply is clear that he will do what is necessary; often not much else is needed as the addict or enemy realizes the game is fundamentally changed. But other times action is absolutely needed. Demonstrating that we are not afraid to treat the enemy as it treats us carries great meaning. Imagine (international law aside) if Israel announced that from now on it will mirror Hamas such that if civilian populations are targeted by bombs from Gaza, Israel will do the same (it is accused of such anyway). The population might finally rethink and take responsibility for its privilege of voting its leaders. As stated earlier, all behavior is instructive and when we mirror we teach the other the effects of his behavior.

Conversely, some situations demand that we assert asymmetry; those cases where it is necessary to highlight our differences with the enemy. Just this week, an disingenuous report was issued by an NGO drawing an equivalence between Palestinian and Israe li schoolbooks claiming that both sides have their relativistic " narratives." Yet, as the Palestinian Media Watch's website has demonstrated for years, there is nothing in the West anywhere comparable to the hatred spewed daily by the Palestinian Authority, including through its education system. It is interesting to note that while the US State Department initially funded the "study,"- in what appears to be an attempt to sanitize the PA's record so that the US can continue to fund the PA against the spirit of US law- Hillary Clinton has a difficult time escaping her conclusion as Senator in 2007 that these schoolbooks along with other media "profoundly poison(s) the minds of these children." It is most important that we do not succumb to this type of use of symmetry that distorts the profound differences between us and the enemy.

Essentially, we are not clear as a nation, participating in a world with international rules, how to bes t fight this enemy. The first act of any rehab is to acknowledge that we do not know how nor are we yet competent to stop our addictions. This is not a book about policy. In fact, the "right" policies are unlikely to emerge until a critical mass has meaningfully dealt with their Control Factors and share a common perspective. We like to look at our history and assume a single perspective throughout but the truth is that we had to learn how to respond to Pearl Harbor, the Nazis, the Cold War etc. The same applies here. Our press promotes "elites" who are tasked with acting as if they possess the "true wisdom" to deal with our threats but the truth is we do not know nor are we equipped to marshal enough of our population to agree just yet. The sooner we learn, however, the less we will suffer. Mirroring has always been a key component of those lessons.

I have been encouraged by some recent acts that have begu n to nip at the asymmetry. For years, the language of "feeling s" had been reserved for our enemy while we were limited to that of "action;" we would do terrible acts that would cause bad feelings in the enemy which would then serve to justify whatever response it made. It had always been a question of the harsh insensitive acts Westerners do against Muslims and the resulting hurt, loss, shame etc. that Muslims experience. The Ground Zero Mosque incident, however, broke new ground because all of a sudden non-Muslims' feelings became the focus and were cast as resulting from Muslim acts. Another example was seen in how quickly the attempt to blame the Benghazi murders on the video about Mohammad fell apart. Just as large corporations eventually learned to turn away from shakedown attempts from race baiters, we are beginning to learn to demand symmetry through mirroring. A word of caution: When enablers change their behavior and demand symmetrical rules f or the addict, the latter typically initially erupts with great resistance. This is a stage we must be prepared to tolerate and fully withstand as it creates the only real chance for the addict to finally change. It is critical, therefore, that when we finally engage in mirroring that we be prepared to see it through completion.

FP: What if we fail to engage in our own Inner Jihad and the Control Factor stays firmly in place?

Siegel: Critical to the Inner Jihad is the realization that our civilization is fragile; not to be taken for granted. Our demands for multi-culturalism and diversity have bumped heads with the simple paradox that tolerating the intolerant leads to extinction. Tolerating the intolerant is perhaps the most crystalline version of

asymmetry we have accepted. Seriously engaged Muslims MUST place the Koran above all law while in America, the Constitution ranks supreme. As Omar Ahmad , founder of CAIR, reputedly said, "Islam isn't in Amer ica to be equal to any other faith, but to become dominant. The Koran is the highest authority in America and Islam is the only accepted religion on Earth." Who makes law- the people or Allah? While the Control Factor constantly seeks for some accommodation between the two, this conflict CAN NOT be negotiated. Only one can survive not because we have declared "war" but because our Islamic Enemy has. That is, perhaps, the lesson we will most need to fully learn, one way or another. We will eventually hit a Turnaround Moment as a nation and if enough of us are not truly prepared to fight and continue to be controlled by our delusions, we will lose. If we truly seek to win, it is better to get there sooner while we have advantages than later.

FP: Bill Siegel, thank you for joining FrontPage Interview.

And thank you for writing this superb and most important book.

We encourage all o f our readers to get their hands on The Control Factor: Our Struggle to See the True Threat and to read it!

Editor's note: To watch *The Glazov Gang*'s recent discussion about the Muslim Brotherhood's infiltration of the United States and the Obama administration, see this week's episode below:

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Filed Under: Daily Mailer, FrontPage Tagged With: Denial, Islam, muslim brotherhood, Obama, Siegel, The Control Factor

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About Jamie Glazov

Jamie Glazov is Frontpage Magazine's editor. He holds a Ph.D. in History with a specialty in Russian, U.S. and Canadian foreign policy. He is the author of the critically acclaimed and best-selling, ***United in Hate: The Left's Romance with Tyranny and Terror.*** His new book is ***High No on For America.*** He is the host of Frontpage's television show, ***The Glazov Gang,*** and he can be reached at jamieglazov11@gmail.com. Visit his sit at ***JamieGlazov.com***.

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AdinaK 86p · *11 hours ago*

The war being waged has two components - mental and physical. The mental side is a minefield of constructs, deeply implanted within generations of Americans, and its PC chickens are coming home to roost. So much so, millions of Americans (westerners) cannot break free of its shackles. But it is not as if these mental chains magically appe ared. Far from it - http://adinakutnicki.com/2012/11/26/the-death-of-...

In addition, the fault-lines of democracy allowed for the most retrograde forces, on this planet, to infiltrate and penetrate the body politic- http://adinakutnicki.com/2012/09/02/the-subversio...

IF the mental and physical constraints are not immediately removed, it is a given that western civilization will fall. Cause and effect.
Adina Kutnicki, Israel - http://adinakutnicki.com/about/

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1 reply · *active 30 minutes ago*

0

dmw · *30 minutes ago*

And I would think one "phy sical constraint" is to not let them in in the first place. By & quot;them" I mean those who have allegiance to a socio-political system disguised as a religion that seeks world dominance by man imposed methodology/effort -- unlike Judaism and Christianity properly understood. If we are to "believe", the world already has a King and does not need a Caliph.

Report

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0

MikeWood · *6 hours ago*

Ground-breaking, brilliant. There are absolutely essentially lessons to be learned from this. Buy this book, read it, study it, and lend it to your friends and colleagues. Do it.

Report

Reply

0

lambsev77 54p · *4 hours ago*

The fall of Rome... The fall of the 3rd Reich... The fall of Western Civilization...

oooooh... Scary!

How about the fall of humankind recorded in Genesis Chapter 3 and following?

We're ALL GONNA DIE! But will you rise with Christ?

Report

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+1

@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadel phia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my

experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

Report

Reply

+1

@WolfyJam · *2 hours ago*

I read the Control factor and it was excellent. I wish more people would realize that our country is at its most vulnerable than ever in its history. the jihadis have basically taken over the inner cities. Islam's love for violence coupled with ignorance and narcissim are a recipe for disaster. I hope Americans wake up in time to save their future. I'm not optimistic though. I think its over but still I fight on.

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From: Bill Siegel [redacted]]
Sent: 2/8/2013 9:02:08 PM
To: jeevacation@gmail.com
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview
Attachments: image001.gif; image002.jpg; image003.png; image004.png; image005.jpg; image006.jpg; image007.png

Importance: High

Stillllllllllllll just engaged. I meant shirley

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 15:49:51 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

shirley or your wife

On Fri, Feb 8, 2013 at 4:48 PM, Bill Siegel <[redacted]> wrote:

I will let you know when I go back. Do you know her?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 15:16:44 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

great. place.. when will you go.. did you get married? i m between alber and santa fe,, zorrro ranch, you can google earth it.

On Fri, Feb 8, 2013 at 4:10 PM, Bill Siegel <[redacted]> wrote:

You ok? I became friendly with shirley maclaine last year and went to her ranch in sante fe. I may go back and remembered you own half the ranch land there or something. Do you still like it there?

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Bill Siegel
Sent: Fri Feb 08 14:58:01 2013
Subject: Re: Fro- The Control Factor - Frontpage Magazine interview

I already rad it. congragulations hope to see you soon

On Fri, Feb 8, 2013 at 3:40 PM, Bill Siegel <[redacted]> wrote:

Bill Siegel hopes this might be of interest to you: http://frontpagemag.com/2013/jamie-glazov/the-control-factor-our-struggle-to-see-the-true-threat/

The Control Factor: Our Struggle to See the True Threat

February 8, 2013 By Jamie Glazov Comments (6)

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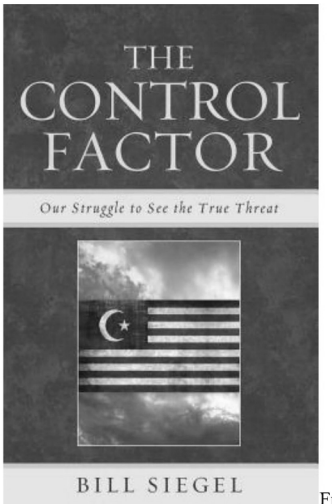

FrontPage Interview's guest today is Bill Siegel, a lawyer and business executive. He has been a producer of several documentary films and assists numerous non-profit organizations. He is the author of The Control Factor: Our Struggle to See the True Threat.

FP: Bill Siegel, welcome to FrontPage Interview.

Congratulations on this brilliant book. It is without question one of the most vital works of our time.

Let's begin with what inspired you to write it.

Siegel: Thanks for having me Jamie. As a young boy born in the mid 1950s, I was fascinated with footage of Hitler and the Third Reich and could never understand how the Jews of the time could not see the evil that seemed so obvious. Not yet appreciative of the benefit of hindsight, I could not comprehend the blindness. Following 9/11, like so many others, I began to study Islam, its history, its current movements, terrorism and so on. As I would learn one stunning aspect after another, I would discuss them with friends and associates. Rather than confront the facts I would present, they would find one clever way after another to avoid the frightening truth of what America and the West truly face. Their fear appeared obvious to me. I began to catalog many of my friends' different maneuvers to dispel the anxiety that they found so difficult to endure. The more I focused on their mental processes (as well as my own) the more I began to see a structure to the mental endeavor and to understand what I had, as a child, found so difficult to explain.

FP: Tell us about the Control Factor, what you describe as "that effort our minds enga ge in in order to keep us blind" and that "process of a voiding seeing the threats we face." It's also about, as you state, trying to believe that the threat is under our control, when in fact it is not. Kindly enlighten us as to these profound insights you make in terms of the Control Factor.

Siegel: First, let's distinguish the "real world" where real battles are taking place from the mental battlefield which occurs in each of our minds. We tend to believe our perceptions are simply clear realizations of what is "out there" and overlook how much our internal worlds can literally determine what we see. When our internal minds become anxious and sense a loss of "control," they tend to concoct ways to distort our

perceptions so as to restore that sense of inner control. I describe the Control Factor as an "active and continuous process" designed to maintain that sense, if not illusion, of control. We natural ly think that our thinking and feeling processes are passive; that they just happen. Yet when faced with truly frightening prospects, the mind is geared to actively distort.

Similarly, the sense of control must be continuously maintained so the Control Factor operates constantly. In turn, the sum of this active and continuous undertaking makes these perceptions all the more familiar and thus seemingly all the more "real." In one sense, the Control Factor is the mechanism of what Andy McCarthy entitled one of his numerous excellent books- willful blindness. The Control Factor is cleverer than we are aware; that is almost tautological as, if our minds are to create ways to keep us in denial, they must out maneuver our conscious thinking.

Since World War II, America has had limited experience with threats coming to the homeland. Most of America's history has been about "over there," where we have always known that if things got too out of hand (e.g. Vietnam) we could always ret urn home. The current generations, for a wide array of reasons, have had virtually no experience with a threat to this land. (The documentary, Generation Zero, is interesting on this point).

Consequently, the process of waking up to such a threat parallels the arc of a typical horror film. In such a film, there is typically a cast of characters surrounding one or two main characters. We in the audience know there is a threat coming – be it a monster, a virus, a psycho killer, an alien, the blob that ate Cincinnati etc. This threat is typically defined by its intent- the singular goal of destroying the characters. Much of the initial exposition shows how the characters first are oblivious to the destruction the threat brings about, then explain it in familiar terms only to finally open their eyes to see that something uniquely terrifying is happening. The next stage usually involves a series of failed attempts to deal with the threat- fr om trying to negotiate with it, to appease it, to coax it, to threaten it with ineffective weapons and so forth. Most of these failings are due to not adequately appreciating the threat for what it truly is and projecting onto it a host of other attributes instead. The final stage generally involves a back-up-against-the-wall decision by whichever characters remain alive. I named this the "turnaround moment" when the character becomes willing to be as ruthless as the threat. That change in mental state is necessary to ensure survival. Ultimately, the storyline is a race for whichever characters remain to wake up fully and use whatever advantages they may still have to beat the threat.

This is the same arc our minds go through in battling our own Control Factors, our own compulsions to deny that which is staring us in the face. Ultimately, the question is whether we will be able to wake up while we still have advantages and give ourselves permis sion to fully fight the battle we are in.

I said ear lier that there is a structure to the Control Factor. To oversimplify, I view it much as a pyramid where on the bottom are the many minute by minute thoughts that are manipulated. I call this level of maneuvers the many "D's" as they include the psychological defenses such as distortion, denial, demonization, deflection, deletion, detachment, delusion, displacement, discolorization and so forth. Layered upon these are moves such as projection, where we can assign to our Islamic Enemy traits we wish to see in them or introject traits from them into ourselves that we wish not to acknowledge. These maneuvers involve a mixing of identities where we actually lose clarity about who we are and who the enemy is. Projection and introjection are active almost across the board. It is always helpful, for instance, to ask how what the enemy accuses us of is more appropriately descriptive of it. When we add Western Guilt and Shame, our need to be liked, and o ther psychological dimensions, basic thoughts solidify into larger fantasies.

As these narratives ("Our courts will never allow that," "As a superpower we will always be able to win any fight we put our minds to," "Assimilation will ensure Muslims are westernized" …) gain consent from others they tend to guide us deeply and become infused on our policies. Ultimately, what emerges is a relationship we take with our Islamic Enemy that parallels that between an addict and an enabler. Emblematic of this relationship is the "transfer of responsibility" in which we assume responsibility for the enemy's behavior who is addicted to transferring it away from itself. The Control Factor actively maintains this relationship and makes changing that relationship as difficult a chore as any addict finds in breaking his addiction. And

just as an addict needs to devote serious effort and con sciousness to his addiction, so must we devote great energy to unders tanding how the Control Factor ultimately sabotages us.

FP: Describe the threat we face in our Islamic enemy. And you talk about the three levels of jihad against us. What are they?

Siegel: Simply stated, our Islamic Enemy seeks the totalitarian domination of Islam throughout the world – Islamic supremacy. It seeks to have the West submit to Islam. Obviously, this does not mean that everybody becomes a Muslim. Islam, in all its varied expressions, permits dhimmis- those Christians, Jews, and some others who are permitted to remain as protected non-Muslims as long as they submit to an inferior status. What is critical is that Shariah (Islamic Law) ultimately rules the world.

Jihad, loosely, is the effort/struggle to see this vision through. The most obvious method of Jihad is through violence; it is the one most familiar to most Westerners and almost all of the Koranic references to Jihad are based in violence. The Violent Jihad includes al-Qaeda and its offshoots as well as other groups that formed around the globe independent of al-Qaeda. It also obviously includes the violence from Islamic nations such as the Islamic Republic of Iran whose constitution specifies such vision. It also includes, however, various militant groups and training camps here in the US as well as ad hoc efforts of individuals.

Since 9/11, there have been something in excess of 15,000 Violent Jihadic attacks across the globe. However, as terrible as this is, we have a tendency in the West to think that the only dimension of threat we face comes from violence. While the Bush administration helped initiate this thinking, the Obama administration has actively abused it by limiting any discussion of the threat we face to al-Qaeda and some other terrorist groups abroad. As frightening as these groups are, we can get some ease from thinking they are a band of "extremists limited in number, weaponry, sophisticati on, and means. Stunningly, Hillary Clinton recently estimated that there are only about 50,000 "homicidal" violent extremists around the world who simply have been able to project power much greater than their number should allow. Here the Control Factor makes the threat appear more easily manageable.

Jihad, however, is pursued in other often even more effective ways which I have grouped into three "levels." A second more insidious level of threat is what the Muslim Brotherhood itself called the "Civilization Jihad." It is the effort to infiltrate all aspects of our society, peacefully according to our laws, in order to later be in position to sabotage and destroy it from the inside. The Civilization Jihadists have learned the culture and rules of the territories they seek to command and use those rules to maneuver—specifically using our freedoms to destroy our freedoms. They use "lawfare" to seek changes in our laws so as to push Shariah into our society. Your readers should read Daniel Pipes and Brooke Goldstein's Lawfare Project material and others to fully appreciate how cancerous this activity has become. This includes intimidating in a variety of ways anyone who speaks out against them or Islam and seeking to squelch our treasured broad right to free speech so as to ultimately prevent any criticisms of Islam. Once criticism of Islam is prohibited, little can stop it from cascading throughout the culture.

The Civilization Jihad includes situating such Jihadists in critical positions in the society, in the government, in the legal system, the military, and elsewhere. It includes the control over university programs that distribute propaganda about Islam and Islamic history which then filters down throughout textbooks for even younger students. It includes control over most of the nation's mosques and local Imams guiding the mess ages engaged Muslims are receiving. Most troublesome are the Muslim g roups (CAIR, ISNA, MSA and others associated and/or joint venture partners with the Muslim Brotherhood) supposedly interested in "outreach" which know how to appear Westernized and interested in the goals of Western Civilization. They have fooled a large part of our authorities and media due in part to their patience and willingness to chip away, one airport prayer room, one frivolous intimidating lawsuit, one Congressman or CIA officer, one mosque, one ruling at a time.

Particularly in the US, given our deep attachment to freedom as well as cultural and psychological tendencies toward diversity, Western guilt and expectations of truthfulness, this effort is devious and difficult to uproot. The Civilization Jihadists present one face to the American public which is completely at odds with their true agenda and how they deal in private. Jamie, you and David and others such as Steve Emerson, Frank

Gaffney, Andy McCarthy and others have done s o much to uncover this level of Jihad that your readers should be urged to review as much of their work (including Steve's recent excellent documentary, The Grand Deception, and Frank's important web video course, The Muslim Brotherhood in America) as possible.

Finally, there is a third level – the International Institutional Jihad. Here the most powerful international institutions such as the UN and the Organization of Islamic Cooperation and others seek to push into America from without those changes which are difficult to complete from within. The OIC is the largest Islamic institution in the world. It essentially controls the vote in the UN's General Assembly and thus explains in part the absurd and abject pro-Islamic, anti-Israel thrust of that organizat ion. This level seeks to use the power of Islamic nations to work fro m outside the West to force changes within the West. While there are various conflicts between many of the nations, being Islamic majority states, there is a great deal they agree upon which becomes the focus of these efforts. Just as the Obama administration is beginning to cooperate with international efforts to control gun ownership, so has Hillary Clinton's Istanbul Process become a dangerous step in the effort to restrict speech critical of Islam by norm (or possibly even treaty) when it may not be fully executable by domestic action alone.

I should point out that Stephen Coughlin, the former Pentagon officer who has an important must-see presentation of Islamic Law, uses different names for these same three levels – Jihad, Dawa, and Ummah. Had I seen his work before I wrote my book I would have conformed to his categorizations.

We must learn how powerful language has become on all three levels. Words such as "peace,[illegible] $B!I "freedom," "terrorism," and phrases such as "human rights" have different meanings for us and for our Islamic Enemy. To oversimplify, "peace" is not something for now but that which comes when all the earth is submitting to Islam. In the context of battles, "peace" is at best a temporary ceasefire. "Freedom" is best understood as having the freedom to fully submit to Islam, not to choose whatever beliefs one desires while respecting the same right in others. We've all seen how "human rights" and "terror" really only apply among Muslims, not to non-Muslims. Our enemy fully understands these differences and uses them at all levels to paralyze us.

Look simply at how the phrase "Israeli-Palestinian conflict" has equalized the two parties, making it all the easier to ascribe features of one to the other and view the problem as a simple-to fix division of ass ets into statehoods but for personality problems among the leaders. The simple truth is that this is and has always been a one-sided Arab war against Israel as Ruth Wisse and others have described and, as Bibi Netanyahu made clear, the ONLY state truly at issue here has been the State of Israel that the Arabs have refused for over half a century. Nonetheless, the Control Factor hypnotically abuses the mind's susceptibility to the intricacies of language.

Even the label "Peace Process" has been damaging language. While most focus upon the first word, turning this into a "process" has helped ensure that peace is never obtained. It is more appropriately called the "Extortion Process" because all that results is that violence is used over decades to extract concessions from Israel.

These three levels must be understood for their differences while united by a single goal. While these levels often op erate together and assist each other, we must avoid "level confusion" which the Control Factor employs to curtail our fears. If the Obama narrative is swallowed- that the only threat is the Violent Jihad- we will miss the other contamination fomenting within our borders. We must appreciate how these levels work together and even unite with other forces such as the global Leftist movement that you, Jamie, have described so forcefully in United in Hate.

FP: You write about how we like to talk of "Good Muslims" and how we are always on the eternal search for "moderate" Muslims (Khatami, Mousavi, Abbas, etc), while we stress how the "extremists" are the real problem and how "f ew" they really are. All of this is connected to the Control F actor. Enlighten us.

Siegel: The Control Factor seeks to have us feel in control of the situation. The easiest way to do this is to simply minimize the number of potential enemies. We have been lectured for years about how Islam is a "religion of peace" and that the violence we see (remember that we have already improperly limited the problem to violence) is the product of a small number of "crazies" (remember Hillary Clinton's 50,000) who

have distorted Islam. I call this the "Peaceful Muslim Disclaimer" as virtually everyone in the press and government has been bullied into making some statement of the kind to silence those who will pressure them that they are "Islamophobic" and Islam is being attacked. (These are the Islam hustlers who operate on the same principles that black race hustlers so effectively used to extort concessions over the last six decades or so).

Nobody has done any real work to support this proposition, nor is it clear exactly how it would be tested. My view is that the grammar "Islam is x" is itself problematic because Islam has expressed itself throughout history in a variety of fashions. It is more useful to talk in terms of how seriously engaged with Islam, the Koran and other texts, a Muslim is. What is significant is how Muslims today are using Islam and most of those who are in power either throughout a large territory or within a small community tend toward, if not fully advocate, the very supremacist ideas that we try to tell ourselves are reserved for the few "extremists." Presumably most Germans did not wish to see all Nazi atrocities carried out but in the end they fell in line because they had to. Those our politicians and press call the "extremists" are in one sense more accurately the "good" Muslims who ar e following their Islamic beliefs dutifully.

FP: Tell us how Western shame and guilt play into all of this.

Siegel: One of the dirty little secrets the Control Factor preys upon is that if we believe we control something we can comfort ourselves that we can change it. Remember the horror film- the threat has one purpose and that is to destroy you. You can not change it, talk it out of it, teach it alternatives or otherwise. That is what makes it so inherently frightening. If we can convince ourselves that we caused the threat to act the way it does we can maintain the secret hope that we can change it. Consequently, there is a tremendous attraction to blaming ourselves for the Islamic Enemy's behavior. And we see this power in our readily accepting responsibility for terror- because of our occupation, our greedy quest for oil, our failure to extend a hand of "engagement," Israel's building settlements, our making videos that defa me Mohammed and so on. Again, the relationship is defined by the enemy blaming us for his actions and our accepting such responsibility.

Shelby Steele has written brilliantly about what he calls "white guilt" and outlines how whites during the 60′s and thereafter were pressured into a transaction whereby in order to re-obtain a sense of moral authority they accepted blame for the condition of blacks and behaved as if guilty. Blacks were able to extract great concessions and whites were able to view themselves as morally restored and redeemed. At a certain point, however, the behavior takes on a life of its own and the narratives become deeply embedded in the culture and, as we can see today, difficult to uproot.

Western guilt is an extension of Steele's notion. President Obama's confessionals to the Arab world admitting that America has made "mistakes" and was not born a colonial pow er express this same tendency to appease through guilt. Hillary Clint on's "reset" with Russia conveyed the same submissive request for a more acceptable response. In being guilty we presume the other party will recognize our contrition and respond in like kind. One of the Control Factor's most devastating moves is employed- presuming the other is just like us and will respond the way we would. This is frequently how an enabler justifies his continuous support for an addict. The problem, however is that our Islamic Enemy is NOT like us and will not respond in like kind. Rather, as we repeatedly refuse to learn, appeasement invites more abuse from an enemy. This becomes the "game of guilt;" it tends to expand to greater and greater consequences. Paradoxically, psychological defenses tend to create the very outcomes they seek to eliminate and it is no different here. It is a game we love to play but, unfortunately, the game gives us no rules for how to end it.

All beha vior is instructive. That is, we teach others how to treat us. The game of guilt, along with other Control Factor tools, teaches our Enemy it is winning and to continue playing.

FP: The reason Nidal Hasan was able to perpetrate his murder spree at Fort Hood is precisely because of our Control Factor. Please connect the dots for our readers.

Siegel: Just as I used to look at Hitler when I was young and be amazed that no one could see what he was about, in retrospect the same applies to Hasan. It is precisely all the elements of the Control Factor that could allow this man, a Soldier of Allah, to be positioned as he was. He was blatantly voicing his Islamist views and Jihadi intent including, even, an essay recommending the "painful liquidation" of non-Muslims. Yet, in

the Army of all places, the Control Factor operated to allow and even foster his work. Even after the murders, we cont inue the denial by calling it "workplace violence." He is the Civilization-Violent Jihad combo! And we continue to enable the same infiltration elsewhere.

FP: Tell our readers about "The Project" and "Explanatory Memorandum." These are realities that serve as great threats to the Control Factor, right?

Siegel: These are separate sets of documents that outline the Muslim Brotherhood's goals and plans underlying the Civilization Jihad. The former was discovered in Europe and extends globally. The 1991 Explanatory Memorandum emerged in 2008 from the Holy Land Foundation trial and describes the Brotherhood's work in America as a "Civilization-Jihadist Process with all the word means" and "a kind of grand Jihad in eliminating and destroying the Western civilization from within and 'sabotaging' its miserable house by their own hands and the hands of the believers so that it is eliminated and God's religion is made victorious over all other religions."

Much as the communists of the Soviet Union had formulated in the 1950s a detailed long term plan to destroy America (many of the effects of which we are seeing of late including destroying the nuclear family, secularizing the nation, feminizing men …) these documents identify many strategies to infiltrate while eroding the foundations of our civilization in order to transform it into an Islamic one. The Control Factor has many ingenious ways to convince us that this is ridiculous, that our courts and system would never allow such a thing, that one is racist or "Islamophobic," if not insane, for even thinking this is real. And just as with the communists, time is plentiful. Even more so with our Islamic Enemy, a multi-decade plan is short term. It is not critical that a seriou sly engaged Muslim lives to see the result. It is critical, more correctly a duty, however, that he carries on his Jihad. Patrick Poole and The Center for Security Policy's Team B Report, Shariah: The Threat to America, are excellent sources for your readers to pursue these documents.

FP: And so what you call an "Inner Jihad" has to start. It's our, as you say, mandatory "addiction treatment." Please explain.

Siegel: The "Inner Jihad" is the effort we must undertake to gain control over our Control Factors. There is a famous Hadith in which Mohammad, returning from a successful battle, essentially says that the physical fight was the "lesser Jihad" and it is time to then attend to the "greater Jihad ⬛"- that internal battle against our own internal appetites, lusts, wrong thinking and so forth. While that Hadith has been falsely utilized to say that "Jihad" is not violent, it is useful to us as a symbol of the vicious effort we must take internally against our own Control Factor tendencies.

As I said earlier, the Control Factor is "active" and "continuous" so we must constantly monitor and combat it. Like "Whack-a-Mole," just as we may think we have addressed it, another variation pops right up. I use the terms "addict" and "enabler" because we truly need a form of rehab to break the habitual power of the Control Factor and because our relationship with our Islamic Enemy is very much like that between a typical addict and his enabler. And just as it is so difficult for an addict to kick his habit, so does the enabler act essentially addicted to his behavior and find it so difficult to change. At its core, the relati onship involves the transfer of responsibility for our Islamic Enemy's hate and resultant actions onto us with our response framed essentially as an effort to do what we can to try to address the Enemy's grievance. (Your book, United in Hate, describes this addiction to hate in detail.

The key to the Inner Jihad is to learn to transfer responsibility for our Islamic Enemy's hate and resultant actions back to it and take responsibility back for our own situation. We must learn all we can about the enemy. We must unwind our inappropriate projections and introjections and rediscover who we are and are not. We must speak up. We must support those Muslims who promote expressions of Islam that are consistent with our principles. And we must stalk the C ontrol Factor, constantly be on guard for its intrusion. This is an individual endeavor as each of our Control Factors uses its own methods. The book gives plenty of examples of each maneuver discussed but it is important for each of us to discover the unique workings of his own mind. That takes the work of the Inner Jihad.

FP: Share with our readers what you mean by the "Turnaround Moment."

Siegel: There is a moment in typical horror films where the central characters have been pushed to their limit. They then change and fully embrace the willingness to be as ruthless as the threat they face. No more moral high ground; no more futile attempts to ignore or change the threat's essence. As Lee Harris described in The Suicide of Reason, it is the willingness o r license to be (not necessarily actually being) as ruthless that is critical. It is a mental state that sheds all the prior counter-productive efforts at denial to finally clearly focus on the threat faced. Part of the Inner Jihad is to reach that Turnaround Moment sooner rather than later.

FP: You suggest that "mirroring" should be used as part of our arsenal. Tell us about it.

Siegel: Mirroring is a literal approach to transferring back to the addict responsibility that we have been inappropriately accepting. Critical to the addict/enabler relationship is asymmetry. Like the addict, the enemy uses a less limiting set of rules than we do. The enemy typically initiates aggression while we respond only. Mirroring means that we demonstrate our willingness to act symmetrically, to be governed by the same rules. It is stunning how much is accomplished when one's attitude simply is clear that he will do what is necessary; often not much else is needed as the addict or enemy realizes the game is fundamentally changed. But other times action is absolutely needed. Demonstrating that we are not afraid to treat the enemy as it treats us carries great meaning. Imagine (international law aside) if Israel announced that from now on it will mirror Hamas such that if civilian populations are targeted by bombs from Gaza, Israel will do the same (it is accused of such anyway). The population might finally rethink and take responsibility for its privilege of voting its leaders. As stated earlier, all behavior is instructive and when we mirror we teach the other the effects of his behavior.

Conversely, some situations demand that we assert asymmetry; those cases where it is necessary to highlight our differences with the enemy. Just this week, an disingenuous report was issued by an NGO drawing an equivalence between Palestinian and Israe li schoolbooks claiming that both sides have their relativistic " narratives." Yet, as the Palestinian Media Watch's website has demonstrated for years, there is nothing in the West anywhere comparable to the hatred spewed daily by the Palestinian Authority, including through its education system. It is interesting to note that while the US State Department initially funded the "study,"- in what appears to be an attempt to sanitize the PA's record so that the US can continue to fund the PA against the spirit of US law- Hillary Clinton has a difficult time escaping her conclusion as Senator in 2007 that these schoolbooks along with other media "profoundly poison(s) the minds of these children." It is most important that we do not succumb to this type of use of symmetry that distorts the profound differences between us and the enemy.

Essentially, we are not clear as a nation, participating in a world with international rules, how to bes t fight this enemy. The first act of any rehab is to acknowledge that we do not know how nor are we yet competent to stop our addictions. This is not a book about policy. In fact, the "right" policies are unlikely to emerge until a critical mass has meaningfully dealt with their Control Factors and share a common perspective. We like to look at our history and assume a single perspective throughout but the truth is that we had to learn how to respond to Pearl Harbor, the Nazis, the Cold War etc. The same applies here. Our press promotes "elites" who are tasked with acting as if they possess the "true wisdom" to deal with our threats but the truth is we do not know nor are we equipped to marshal enough of our population to agree just yet. The sooner we learn, however, the less we will suffer. Mirroring has always been a key component of those lessons.

I have been encouraged by some recent acts that have begu n to nip at the asymmetry. For years, the language of "feeling s" had been reserved for our enemy while we were limited to that of "action;" we would do terrible acts that would cause bad feelings in the enemy which would then serve to justify whatever response it made. It had always been a question of the harsh insensitive acts Westerners do against Muslims and the resulting hurt, loss, shame etc. that Muslims experience. The Ground Zero Mosque incident, however, broke new ground because all of a sudden non-Muslims' feelings became the focus and were cast as resulting from Muslim acts. Another example was seen in how quickly the attempt to blame the Benghazi murders on the video about Mohammad fell apart. Just as large corporations eventually learned to turn away from shakedown attempts from race baiters, we are beginning to learn to demand symmetry through mirroring. A word of caution: When enablers change their behavior and demand symmetrical rules f or the addict, the latter typically initially erupts with great resistance. This is a stage we must be prepared to

tolerate and fully withstand as it creates the only real chance for the addict to finally change. It is critical, therefore, that when we finally engage in mirroring that we be prepared to see it through completion.

FP: What if we fail to engage in our own Inner Jihad and the Control Factor stays firmly in place?

Siegel: Critical to the Inner Jihad is the realization that our civilization is fragile; not to be taken for granted. Our demands for multi-culturalism and diversity have bumped heads with the simple paradox that tolerating the intolerant leads to extinction. Tolerating the intolerant is perhaps the most crystalline version of asymmetry we have accepted. Seriously engaged Muslims MUST place the Koran above all law while in America, the Constitution ranks supreme. As Omar Ahmad , founder of CAIR, reputedly said, "Islam isn't in Amer ica to be equal to any other faith, but to become dominant. The Koran is the highest authority in America and Islam is the only accepted religion on Earth." Who makes law- the people or Allah? While the Control Factor constantly seeks for some accommodation between the two, this conflict CAN NOT be negotiated. Only one can survive not because we have declared "war" but because our Islamic Enemy has. That is, perhaps, the lesson we will most need to fully learn, one way or another. We will eventually hit a Turnaround Moment as a nation and if enough of us are not truly prepared to fight and continue to be controlled by our delusions, we will lose. If we truly seek to win, it is better to get there sooner while we have advantages than later.

FP: Bill Siegel, thank you for joining FrontPage Interview.

And thank you for writing this superb and most important book.

We encourage all o f our readers to get their hands on The Control Factor: Our Struggle to See the True Threat and to read it!

Editor's note: To watch *The Glazov Gang*'s recent discussion about the Muslim Brotherhood's infiltration of the United States and the Obama administration, see this week's episode below:

Freedom Center pamphlets now available on Kindle: Click here.

Filed Under: Daily Mailer, FrontPage Tagged With: Denial, Islam, muslim brotherhood, Obama, Siegel, The Control Factor

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About Jamie Glazov

Jamie Glazov is Frontpage Magazine's editor. He holds a Ph.D. in History with a specialty in Russian, U.S. and Canadian foreign policy. He is the author of the critically acclaimed and best-selling, ***United in Hate: The Left's Romance with Tyranny and Terror.*** His new book is ***High No on For America.*** He is the host of Frontpage's television show, ***The Glazov Gang,*** and he can be reached at jamieglazov11@gmail.com. Visit his sit at ***JamieGlazov.com***.

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AdinaK 86p · *11 hours ago*

The war being waged has two components - mental and physical. The mental side is a minefield of constructs, deeply implanted within generations of Americans, and its PC chickens are coming home to roost. So much so, millions of Americans (westerners) cannot break free of its shackles. But it is not as if these mental chains magically appe ared. Far from it - http://adinakutnicki.com/2012/11/26/the-death-of-...

In addition, the fault-lines of democracy allowed for the most retrograde forces, on this planet, to infiltrate and penetrate the body politic- http://adinakutnicki.com/2012/09/02/the-subversio...

IF the mental and physical constraints are not immediately removed, it is a given that western civilization will fall. Cause and effect.
Adina Kutnicki, Israel - http://adinakutnicki.com/about/

Report

Reply

1 reply · *active 30 minutes ago*

0

dmw · *30 minutes ago*

And I would think one "phy sical constraint" is to not let them in in the first place. By & quot;them" I mean those who have allegiance to a socio-political system disguised as a religion that seeks world dominance by man imposed methodology/effort -- unlike Judaism and Christianity properly understood. If we are to "believe", the world already has a King and does not need a Caliph.

Report

Reply

0

MikeWood · *6 hours ago*

Ground-breaking, brilliant. There are absolutely essentially lessons to be learned from this. Buy this book, read it, study it, and lend it to your friends and colleagues. Do it.

Report

Reply

0

lambsev77 54p · *4 hours ago*

The fall of Rome... The fall of the 3rd Reich... The fall of Western Civilization...

oooooh... Scary!

How about the fall of humankind recorded in Genesis Chapter 3 and following?

We're ALL GONNA DIE! But will you rise with Christ?

Report

Reply

+1

@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadel phia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

Report

Reply

+1

@WolfyJam · *2 hours ago*

I read the Control factor and it was excellent. I wish more people would realize that our country is at its most vulnerable than ever in its history. the jihadis have basically taken over the inner cities. Islam's love for violence coupled with ignorance and narcissim are a recipe for disaster. I hope Americans wake up in time to save their future. I'm not optimistic though. I think its over but still I fight on.

Report

Reply

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FPM appreciates your comments that abide by the following guidelines:

1. Avoid profanities or foul language.
2. Stay on topic.
3. No ad hominem attacks.
4. Threats are treated seriously and reported to law enforcem ent.
5. Spam and advertising are not permitted in the comments area.

6. Impersonators will be banned immediately.

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Private Placement Memorandum
Dated September 27, 2006

CONFIDENTIAL **$1,000,000,000**

KNOWLEDGE UNIVERSE EDUCATION L.P.

KUE Management Inc.

Investment Units consisting of Common Limited Partner Units of Knowledge Universe Education LP and Class A Ordinary Shares of KUE Management Inc.

Knowledge Universe Education L.P. ("KUE," and, together with its subsidiaries, the "Company") is a Cayman Islands exempted limited partnership. KUE Management Inc. is a Cayman Islands exempted company and the sole general partner of KUE (the "General Partner"). KUE is the indirect controlling stockholder of Knowledge Learning Corporation ("KLC"), the largest for-profit early childhood care and education company in the U.S., which operates approximately 2,500 locations in 39 states.

We are offering investment units (the "Units"), each comprised of one Common limited partner unit ("Common LP Unit") in KUE and one Class A ordinary share of the General Partner ("Class A Share"), for $1,000 per Unit. We are offering the Units on a strictly confidential basis pursuant to a private placement with Goldman, Sachs & Co. and Credit Suisse acting as placement agents (the "Agents"), subject to various conditions, exclusively to accredited investors. We intend to use the net proceeds from the sale of the Units to expand operations, including through strategic acquisitions in the U.S. and internationally, to develop new products and services, to repay certain existing indebtedness and for other corporate purposes. We reserve the right to withdraw, cancel or modify the offer and to reject orders in whole or in part. The offering is expected to be completed in one or more closings on or prior to March 31, 2007.

The Units and the underlying Common LP Units and Class A Shares have not been, nor will they be, registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), or qualified under any applicable U.S. state statutes or laws of any non-U.S. jurisdiction. The Units will be offered and sold under the exemption from registration provided by Section 4(2) of the Securities Act and Regulation D and Regulation S promulgated under the Securities Act, and other similar exemptions available pursuant to the laws of the states and other jurisdictions where the offering will be made.

There is no public market for the Units and no such market is expected to develop in the future. There is no obligation on the part of any person to register the Units or the underlying Common LP Units or Class A Shares under the Securities Act or any state or non-U.S. securities laws other than in the limited circumstances described in this Private Placement Memorandum.

Investing in the Units involves risks. You should read the section entitled "Risk Factors" beginning on page 44 for a discussion of certain risk factors that you should consider before investing in the Units.

Placement Agents

Goldman, Sachs & Co. **Credit Suisse**

Private Placement Memorandum dated September 27, 2006.

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You should rely only on the information contained in this Private Placement Memorandum (this "Memorandum") or to which we have referred you. We have not authorized anyone to provide you with information that is different. This Memorandum may only be used where it is legal to sell the Units. The information in this Memorandum may only be accurate on the date of this Memorandum. No person has any obligation to update the statements and information contained in this Memorandum.

NOTICE TO INVESTORS

THIS CONFIDENTIAL MEMORANDUM IS BEING FURNISHED ON A STRICTLY CONFIDENTIAL BASIS SOLELY TO A LIMITED NUMBER OF SOPHISTICATED PROSPECTIVE INVESTORS FOR THE PURPOSE OF PROVIDING CERTAIN INFORMATION REGARDING THE OFFERING OF THE UNITS. A PROSPECTIVE INVESTOR MAY NOT DISTRIBUTE OR REPRODUCE THIS MEMORANDUM, OR DISCLOSE ITS CONTENTS, TO ANY PERSON OTHER THAN PROFESSIONAL REPRESENTATIVES OF THE INVESTOR IN CONNECTION WITH ITS CONSIDERATION OF THIS INVESTMENT. AS CONTEMPLATED BY THE CONFIDENTIALITY AGREEMENTS BETWEEN THE INVESTORS AND KUE, THIS MEMORANDUM AND ANY INFORMATION FURNISHED IN CONNECTION HEREWITH (COLLECTIVELY, THE "COMPANY INFORMATION"), YOU ACKNOWLEDGE AND AGREE THAT (I) ALL COMPANY INFORMATION IS CONFIDENTIAL; (II) YOU WILL NOT DISTRIBUTE OR REPRODUCE THE COMPANY INFORMATION IN WHOLE OR IN PART AND WILL USE THE COMPANY INFORMATION SOLELY TO EVALUATE AN INVESTMENT IN THE UNITS AND NOT FOR ANY OTHER PURPOSE; (III) IN THE EVENT THAT YOU HAVE NO FURTHER INTEREST IN PARTICIPATING IN THIS OFFERING, OR IF AT ANY TIME THE COMPANY SO REQUESTS (AT ITS DISCRETION), YOU WILL PROMPTLY RETURN, DESTROY OR DELETE ALL COMPANY INFORMATION THAT YOU HAVE RECEIVED AT THE EARLIEST OPPORTUNITY AS REQUESTED BY THE COMPANY; AND (IV) YOU WILL NOT DISCLOSE TO ANY THIRD PARTY THE COMPANY INFORMATION THAT HAS BEEN PROVIDED TO YOU. EACH PROSPECTIVE INVESTOR IS RESPONSIBLE FOR THE FEES OF ITS OWN COUNSEL, ACCOUNTANTS AND OTHER ADVISORS.

THE UNITS OFFERED HEREBY AND THE COMMON LP UNITS AND CLASS A SHARES REPRESENTED THEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE AND NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM, AND THEN ONLY TO THE EXTENT PERMITTED BY THE LIMITED PARTNERSHIP AGREEMENT OF KUE AND THE GOVERNING DOCUMENTS AND AGREEMENT AMONG MEMBERS OF THE GENERAL PARTNER. ACCORDINGLY, INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF AN INVESTMENT IN THE UNITS OFFERED HEREBY FOR AN INDEFINITE PERIOD OF TIME.

THE STATEMENTS AND INFORMATION CONTAINED IN THIS MEMORANDUM HAVE BEEN COMPILED AS OF THE DATE HEREOF (UNLESS OTHERWISE STATED HEREIN) FROM THE COMPANY AND FROM OTHER SOURCES. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY OR THAT THE INFORMATION SET FORTH HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. NO PERSON HAS ANY OBLIGATION TO UPDATE THE STATEMENTS AND INFORMATION CONTAINED HEREIN.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY, THE GENERAL PARTNER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. YOU ACKNOWLEDGE THAT (A) YOU HAVE NOT RELIED ON THE AGENTS OR ANY PERSON AFFILIATED WITH THE AGENTS IN CONNECTION WITH YOUR INVESTIGATION OF THE ACCURACY OF THE INFORMATION PROVIDED HEREIN OR YOUR INVESTMENT DECISION AND (B) NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION CONCERNING THE COMPANY, THE GENERAL PARTNER OR THE OFFERING OTHER THAN AS CONTAINED IN THIS MEMORANDUM AND INFORMATION GIVEN BY DULY AUTHORIZED OFFICERS AND EMPLOYEES OF THE COMPANY IN CONNECTION WITH

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YOUR EXAMINATION OF THE COMPANY, THE GENERAL PARTNER AND THE TERMS OF THIS OFFERING, AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY, THE GENERAL PARTNER OR THE AGENTS.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER BY ANY PERSON TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY UNITS OR COMPONENTS THEREOF IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFER OR SOLICITATION.

THE UNITS AND COMPONENT SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR THE SECURITIES LAWS OF THE STATES OR ANY NON-U.S. JURISDICTION AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH STATE AND NON-U.S. LAWS. THE UNITS HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER FEDERAL, STATE OR NON-U.S. SECURITIES COMMISSION OR REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

NEITHER THE GENERAL PARTNER NOR THE COMPANY IS REQUIRED TO REGISTER OR BE REGULATED AS A MUTUAL FUND UNDER THE MUTUAL FUNDS LAW (2003 REVISION) OF THE CAYMAN ISLANDS. NEITHER THE CAYMAN ISLANDS MONETARY AUTHORITY NOR ANY OTHER GOVERNMENTAL AUTHORITY IN THE CAYMAN ISLANDS HAS PASSED JUDGMENT UPON OR APPROVED THE TERMS OR MERITS OF THIS DOCUMENT. THERE IS NO INVESTMENT COMPENSATION SCHEME AVAILABLE TO INVESTORS IN THE CAYMAN ISLANDS.

PROSPECTIVE INVESTORS SHOULD READ THIS ENTIRE MEMORANDUM CAREFULLY BEFORE DECIDING WHETHER TO PURCHASE THE UNITS, AND PROSPECTIVE INVESTORS SHOULD MAKE THEIR OWN INVESTIGATION OF THE INVESTMENT DESCRIBED HEREIN, INCLUDING THE MERITS AND RISKS INVOLVED AND THE LEGALITY AND TAX CONSEQUENCES OF SUCH AN INVESTMENT. PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THIS MEMORANDUM OR ITS CONTENTS AS LEGAL, TAX, INVESTMENT OR OTHER ADVICE. PROSPECTIVE INVESTORS WILL HAVE THE OPPORTUNITY TO ASK QUESTIONS AND RECEIVE ANSWERS AND ADDITIONAL INFORMATION ABOUT THE COMPANY, THE GENERAL PARTNER AND THE UNITS TO VERIFY THE INFORMATION CONTAINED HEREIN TO THE EXTENT REPRESENTATIVES OF THE COMPANY POSSESS SUCH INFORMATION. EACH INVESTOR SHOULD MAKE ITS OWN INQUIRIES AND CONSULT ITS OWN ADVISORS CONCERNING THE VARIOUS LEGAL, TAX AND ECONOMIC CONSIDERATIONS RELATING TO ITS INVESTMENT.

THIS MEMORANDUM DOES NOT CONTAIN THE INFORMATION, INCLUDING FINANCIAL STATEMENTS, THAT WOULD BE INCLUDED IN A REGISTRATION STATEMENT FILED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION.

THIS MEMORANDUM CONTAINS PROJECTIONS FOR KLC AND *K12* INC. THAT ARE BASED UPON A NUMBER OF ASSUMPTIONS AND ESTIMATES THAT, WHILE PRESENTED WITH NUMERICAL SPECIFICITY AND CONSIDERED REASONABLE BY MANAGEMENT WHEN TAKEN AS A WHOLE, INHERENTLY ARE SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE AND OTHER RISKS, UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE CONTROL OF THE COMPANY, AND ARE BASED UPON SPECIFIC ASSUMPTIONS WITH RESPECT TO FUTURE BUSINESS DECISIONS, SOME OR ALL OF WHICH WILL CHANGE. PROJECTIONS ARE NECESSARILY SPECULATIVE IN NATURE AND IT CAN BE EXPECTED THAT ASSUMPTIONS UNDERLYING THE PROJECTIONS WILL NOT PROVE TO BE VALID OR WILL VARY FROM ACTUAL RESULTS. ACCORDINGLY, THE PROJECTIONS ARE ONLY AN ESTIMATE. ACTUAL RESULTS WILL VARY FROM THE PROJECTIONS AND THE VARIATIONS MAY BE MATERIAL. CONSEQUENTLY, YOUR RECEIPT OF THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION BY

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THE COMPANY, ITS ADVISORS, THE AGENTS, OR ANY OTHER PERSON OF RESULTS THAT WILL ACTUALLY BE ACHIEVED. PROSPECTIVE PURCHASERS OF THE UNITS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THESE PROJECTIONS.

THE INFORMATION PRESENTED HEREIN WAS PREPARED OR OBTAINED BY KUE AND IS BEING FURNISHED SOLELY FOR USE BY PROSPECTIVE INVESTORS IN CONNECTION WITH THE OFFERING. THE AGENTS HAVE NOT ASSUMED ANY RESPONSIBILITY FOR INDEPENDENT VERIFICATION OF THE INFORMATION CONTAINED HEREIN OR OTHERWISE MADE AVAILABLE IN CONNECTION WITH THE OFFERING OF SECURITIES AND MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. NOTHING CONTAINED HEREIN IS, OR SHOULD BE RELIED ON AS, A PROMISE OR REPRESENTATION AS TO THE FUTURE PERFORMANCE OF KUE.

NOTICE TO NON-U.S. INVESTORS

NOTICE TO RESIDENTS OF ARGENTINA

THIS MEMORANDUM HAS NOT BEEN APPROVED BY ANY SECURITIES REGULATOR IN ARGENTINA AND DOES NOT ENABLE KUE, THE GENERAL PARTNER, OR ANY OTHER PARTY TO MAKE A PUBLIC OFFERING OF THE UNITS. THIS MEMORANDUM HAS ONLY BEEN ADDRESSED DIRECTLY TO THE PROSPECTIVE INVESTORS DESIGNATED AND IS INTENDED TO PROVIDE INFORMATION AT THEIR REQUEST. THIS MEMORANDUM SHOULD NOT BE CIRCULATED OR MADE PUBLIC IN ANY WAY. INVESTORS PARTICIPATING IN THIS ISSUANCE FULLY ACKNOWLEDGE THAT THEY HAVE BEEN INVITED PERSONALLY AND IN CONSIDERATION OF THEIR SPECIAL POSITION AS SOPHISTICATED INVESTORS AND THAT THEY HAVE HAD ALL PROPER AND DUE PERSONAL COUNSELING TO ADOPT ANY DECISION RELATED TO THIS ISSUANCE. THE UNITS ARE NOT AUTHORIZED TO BE OFFERED PUBLICLY IN THE ARGENTINEAN MARKET OR TO BE SOLD TO ANY INVESTOR IN ARGENTINA.

NOTICE TO RESIDENTS OF AUSTRALIA

THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE LODGED WITH THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION. THE OFFER IS ONLY MADE TO THOSE PERSONS TO WHOM DISCLOSURE IS NOT REQUIRED UNDER DIVISION 2 OF PART 6D.2 OR PART 7.9 OF THE CORPORATIONS ACT 2001 AND DOES NOT PURPORT TO BE AN OFFER OF INTERESTS FOR WHICH DISCLOSURE IS REQUIRED. IN ADDITION, KUE IS NOT A REGISTERED SCHEME AS DEFINED IN THE CORPORATIONS ACT 2001. RESALE OF THE UNITS IN AUSTRALIA WITHIN 12 MONTHS OF THE DATE OF ISSUE MAY REQUIRE THE SELLER TO COMPLY WITH THE DISCLOSURE REQUIREMENTS OF DIVISION 2 OF PART 6D.2 OR PART 7.9 OF THE CORPORATIONS ACT 2001.

NOTICE TO RESIDENTS OF BRAZIL

KUE IS NOT A PUBLICLY-HELD CORPORATION AND IS NOT LISTED WITH ANY STOCK EXCHANGE, ORGANIZED OVER THE COUNTER MARKET OR ELECTRONIC SYSTEM OF SECURITIES TRADING. LIKEWISE, THE UNITS HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH ANY SECURITIES EXCHANGE COMMISSION OR OTHER SIMILAR AUTHORITY, INCLUDING THE BRAZILIAN SECURITIES AND EXCHANGE COMMISSION (COMISSÃO DE VALORES MOBILÁRIOS-"CVM"). ANY PUBLIC OFFERING, AS DEFINED UNDER BRAZILIAN LAWS AND REGULATIONS, OF THE UNITS IN BRAZIL IS NOT LEGAL WITHOUT SUCH PRIOR REGISTRATION UNDER LAW NR. 6.385/76. SUBSEQUENT TRADING OF THE UNITS IN BRAZIL IS ALLOWED ONLY BY MEANS OF PRIVATE TRANSACTIONS AND IS NOT SUBJECT TO REGISTRATION WITH THE CVM TO THE EXTENT THAT SUCH TRADING DOES NOT QUALIFY AS A PUBLIC OFFERING. IT SHOULD BE NOTED THAT A SELLER OF THE UNITS, HOWEVER, MAY BE ASKED BY THE PURCHASER TO COMPLY WITH PROCEDURAL REQUIREMENTS TO EVIDENCE PREVIOUS TITLE TO THE UNITS, AND MAY BE SUBJECT TO BRAZILIAN TAX ON CAPITAL GAINS WHICH MAY BE WITHHELD FROM THE SALE PRICE. PERSONS WISHING TO OFFER OR ACQUIRE THE UNITS

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WITHIN BRAZIL SHOULD CONSULT WITH THEIR OWN COUNSEL AS TO THE APPLICABILITY OF THESE REGISTRATION REQUIREMENTS OR ANY EXEMPTION THEREFROM.

THIS MEMORANDUM IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE ADDRESSEE AND CANNOT BE DELIVERED OR DISCLOSED IN ANY MANNER WHATSOEVER TO ANY PERSON OR ENTITY OTHER THAN THE ADDRESSEE.

NOTICE TO RESIDENTS OF CANADA

THIS MEMORANDUM CONSTITUTES AN OFFERING OF THE UNITS DESCRIBED HEREIN ONLY IN THOSE JURISDICTIONS IN CANADA AND TO THOSE PERSONS WHERE AND TO WHOM THEY MAY BE LAWFULLY OFFERED FOR SALE AND THEREIN ONLY BY PERSONS PERMITTED TO SELL SUCH SECURITIES. THIS MEMORANDUM IS NOT, AND UNDER NO CIRCUMSTANCES IS TO BE CONSTRUED AS, AN ADVERTISEMENT OR A PUBLIC OFFERING OF THE UNITS IN CANADA. NO SECURITIES COMMISSION OR SIMILAR REGULATORY AUTHORITY IN CANADA HAS REVIEWED OR IN ANY WAY PASSED UPON THIS MEMORANDUM OR THE MERIT OF THE UNITS AND ANY REPRESENTATION TO THE CONTRARY IS AN OFFENCE UNDER APPLICABLE SECURITIES LAWS.

No dealer, salespersons or other individual has been authorized to give any information or to make any representations not contained in this Memorandum in connection with the offer made by this Memorandum and, if given or made, such information or representations must not be relied upon as having been authorized by KUE or by the General Partner or by any placement agent. Neither the delivery of this Memorandum nor any sale made hereunder shall, under any circumstances, create an implication that there has not been any change in the facts as set forth in this Memorandum or in the affairs of KUE or the General Partner since the date hereof.

Resale Restrictions in Canada. THE DISTRIBUTION OF THE UNITS IN CANADA IS BEING MADE ON A PRIVATE PLACEMENT BASIS. ACCORDINGLY, ANY RESALE OF THE UNITS MUST BE MADE IN ACCORDANCE WITH AN EXEMPTION FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF APPLICABLE SECURITIES LAWS. NEITHER KUE NOR THE GENERAL PARTNER IS A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA. PURCHASERS OF THE UNITS ARE ADVISED TO SEEK LEGAL ADVICE PRIOR TO ANY RESALE OF THE UNITS.

Enforcement of Legal Rights. THE GENERAL PARTNER IS A CAYMAN ISLANDS EXEMPTED COMPANY AND KUE IS A CAYMAN ISLANDS EXEMPTED LIMITED PARTNERSHIP. THE DIRECTORS, OFFICERS AND REPRESENTATIVES OF THE GENERAL PARTNER AND KUE MAY BE LOCATED OUTSIDE CANADA AND, AS A RESULT, IT MAY NOT BE POSSIBLE FOR CANADIAN PURCHASERS TO EFFECT SERVICE OF PROCESS WITHIN CANADA UPON THE GENERAL PARTNER, KUE, OR THEIR DIRECTORS, OFFICERS OR REPRESENTATIVES. ALL OR A SUBSTANTIAL PORTION OF THE ASSETS OF KUE, THE GENERAL PARTNER AND THEIR DIRECTORS, OFFICERS OR REPRESENTATIVES MAY BE LOCATED OUTSIDE OF CANADA AND, AS A RESULT, IT MAY NOT BE POSSIBLE TO SATISFY A JUDGMENT AGAINST SUCH PERSONS IN CANADA OR TO ENFORCE A JUDGMENT OBTAINED IN CANADIAN COURTS AGAINST SUCH PERSONS OUTSIDE OF CANADA.

Right of Action for Damages or Rescission. THE FOLLOWING SUMMARY IS SUBJECT TO THE EXPRESS PROVISIONS OF THE SECURITIES ACT (ONTARIO), THE SECURITIES ACT (NEW BRUNSWICK) AND THE SECURITIES ACT (NOVA SCOTIA) AND THE RULES AND REGULATIONS THEREUNDER AND REFERENCE IS MADE THERETO FOR THE COMPLETE TEXT OF SUCH PROVISIONS. THE SECURITIES ACT (ONTARIO) AND THE SECURITIES ACT (NEW BRUNSWICK) PROVIDE CERTAIN PURCHASERS IN ONTARIO AND NEW BRUNSWICK, RESPECTIVELY, WITH A STATUTORY RIGHT OF ACTION FOR DAMAGES OR RESCISSION AGAINST THE ISSUER WHERE AN OFFERING MEMORANDUM CONTAINS A MISREPRESENTATION. THE SECURITIES ACT (NOVA SCOTIA) PROVIDES PURCHASERS IN NOVA SCOTIA WITH A STATUTORY RIGHT OF ACTION FOR DAMAGES AGAINST EVERY SELLER, EVERY DIRECTOR OF THE SELLER AT THE DATE OF THIS

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MEMORANDUM AND EVERY PERSON WHO SIGNED THE OFFERING MEMORANDUM OR A RIGHT OF RESCISSION AGAINST EVERY SELLER WHERE AN OFFERING MEMORANDUM CONTAINS A MISREPRESENTATION. SUCH PURCHASERS WHO PURCHASE A SECURITY OFFERED BY THE OFFERING MEMORANDUM DURING THE PERIOD OF DISTRIBUTION ARE DEEMED TO HAVE RELIED ON SUCH MISREPRESENTATION IF IT WAS A MISREPRESENTATION AT THE TIME OF PURCHASE.

FOR PURCHASERS IN ONTARIO AND NOVA SCOTIA, THESE STATUTORY RIGHTS ARE EXERCISABLE, IN THE CASE OF AN ACTION FOR RESCISSION, 180 DAYS AFTER THE DATE OF THE TRANSACTION THAT GAVE RISE TO THE CAUSE OF ACTION OR, IN THE CASE OF ANY ACTION, OTHER THAN AN ACTION FOR RESCISSION, THE EARLIER OF (I) 180 DAYS AFTER THE PLAINTIFF FIRST HAD KNOWLEDGE OF THE FACTS GIVING RISE TO THE CAUSE OF ACTION AND (II) THREE YEARS AFTER THE DATE OF THE TRANSACTION THAT GAVE RISE TO THE CAUSE OF ACTION. NOTWITHSTANDING THE FOREGOING, IN NOVA SCOTIA, NO ACTION MAY BE COMMENCED MORE THAN 120 DAYS AFTER THE DATE ON WHICH PAYMENT WAS MADE FOR THE SECURITIES OR AFTER THE DATE ON WHICH THE INITIAL PAYMENT FOR THE SECURITIES WAS MADE WHERE PAYMENTS SUBSEQUENT TO THE INITIAL PAYMENT ARE MADE PURSUANT TO A CONTRACTUAL COMMITMENT ASSUMED PRIOR TO, OR CONCURRENTLY WITH, THE INITIAL PAYMENT.

FOR PURCHASERS IN NEW BRUNSWICK, THESE STATUTORY RIGHTS ARE EXERCISABLE, IN THE CASE OF AN ACTION FOR RESCISSION, 180 DAYS AFTER THE DATE OF THE TRANSACTION THAT GAVE RISE TO THE CAUSE OF ACTION OR, IN THE CASE OF ANY ACTION, OTHER THAN AN ACTION FOR RESCISSION, THE EARLIER OF (I) ONE YEAR AFTER THE PLAINTIFF FIRST HAD KNOWLEDGE OF THE FACTS GIVING RISE TO THE CAUSE OF ACTION AND (II) 6 YEARS AFTER THE DATE OF THE TRANSACTION THAT GAVE RISE TO THE CAUSE OF THE ACTION.

THE RIGHTS DISCUSSED ABOVE ARE IN ADDITION TO AND WITHOUT DEROGATION FROM ANY OTHER RIGHT OR REMEDY WHICH PURCHASERS MAY HAVE AT LAW AND ARE INTENDED TO CORRESPOND TO THE PROVISIONS OF THE RELEVANT SECURITIES LEGISLATION AND ARE SUBJECT TO THE DEFENCES CONTAINED THEREIN.

Canadian Federal Income Tax Considerations. THIS MEMORANDUM DOES NOT DISCUSS THE CANADIAN FEDERAL INCOME TAX CONSIDERATIONS RELEVANT TO A HOLDER OF THE UNITS RESIDENT IN CANADA FOR PURPOSES OF THE *INCOME TAX ACT* (CANADA) (THE "ITA"). THE RULES FOR THE TAXATION OF PARTNERS AND PARTNERSHIPS UNDER THE ITA ARE EXTREMELY COMPLEX AND, ACCORDINGLY, PROSPECTIVE PURCHASERS OF THE UNITS WHO ARE RESIDENT IN CANADA ARE STRONGLY ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS PRIOR TO PURCHASING ANY UNITS.

Forward Looking Statements. CERTAIN STATEMENTS IN THIS MEMORANDUM CONSTITUTE "FORWARD-LOOKING STATEMENTS." FORWARD-LOOKING STATEMENTS INCLUDE STATEMENTS CONCERNING THE PLANS, OBJECTIVES, GOALS, STRATEGIES AND FUTURE OPERATIONS AND PERFORMANCE OF KUE AND THE GENERAL PARTNER AND THE ASSUMPTIONS UNDERLYING THESE FORWARD-LOOKING STATEMENTS. KUE AND THE GENERAL PARTNER USE THE WORDS "ANTICIPATES," "ESTIMATES," EXPECTS," "BELIEVES," "INTENDS," "PLANS," "MAY," "WILL," "SHOULD," AND ANY SIMILAR EXPRESSIONS TO IDENTIFY FORWARD-LOOKING STATEMENTS. THESE FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS, PERFORMANCE AND ACHIEVEMENTS TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. SUCH FORWARD-LOOKING STATEMENTS ARE BASED ON NUMEROUS ASSUMPTIONS REGARDING PRESENT AND FUTURE BUSINESS STRATEGIES AND THE ENVIRONMENT IN WHICH KUE AND THE GENERAL PARTNER WILL OPERATE IN THE FUTURE. AS A RESULT OF THESE RISK, UNCERTAINTIES AND

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ASSUMPTIONS, A PROSPECTIVE INVESTOR SHOULD NOT PLACE UNDUE RELIANCE ON THESE FORWARD-LOOKING STATEMENTS. SEE "RISK FACTORS" IN THIS MEMORANDUM.

THESE FORWARD-LOOKING STATEMENTS SPEAK ONLY AS OF THE DATE OF THIS MEMORANDUM. NEITHER KUE NOR THE GENERAL PARTNER IS OBLIGED, AND DOES NOT INTEND, TO UPDATE OR REVISE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE. ALL SUBSEQUENT WRITTEN AND ORAL FORWARD-LOOKING STATEMENTS ATTRIBUTABLE TO KUE, THE GENERAL PARTNER, OR PERSONS ACTING ON THEIR BEHALF, ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS CONTAINED THROUGHOUT THIS MEMORANDUM.

Financial information. FINANCIAL INFORMATION CONTAINED IN THIS MEMORANDUM HAVE NOT BEEN PREPARED IN ACCORDANCE WITH U.S. GENERALLY ACCEPTED ACCOUNTING PRACTICES, AND MAY DIFFER IN CERTAIN RESPECTS FROM THOSE ACCOUNTING PRINCIPLES USED IN OTHER JURISDICTIONS, INCLUDING CANADA. PROSPECTIVE PURCHASERS SHOULD CONDUCT THEIR OWN INVESTIGATION AND ANALYSIS OF THE BUSINESS, DATA AND TRANSACTION DESCRIBED HEREIN AND CONSULT THEIR OWN FINANCIAL ADVISORS. SEE "NON-GAAP FINANCIAL MEASURES" BELOW IN THIS MEMORANDUM.

Representations of Canadian Purchasers. EACH PURCHASER OF THE UNITS RESIDENT IN A CANADIAN JURISDICTION WILL BE DEEMED TO HAVE REPRESENTED TO KUE AND THE GENERAL PARTNER AND THE AGENTS WHO SELLS THE UNITS TO SUCH PURCHASER THAT: (A) THE OFFER AND SALE OF THE UNITS WAS MADE EXCLUSIVELY THROUGH THIS MEMORANDUM AND WAS NOT MADE THROUGH AN ADVERTISEMENT OF THE UNITS IN ANY PRINTED MEDIA OF GENERAL AND REGULAR PAID CIRCULATION, RADIO, TELEVISION OR TELECOMMUNICATIONS, INCLUDING ELECTRONIC DISPLAY, OR ANY OTHER FORM OF ADVERTISING IN CANADA; (B) SUCH PURCHASER HAS REVIEWED AND ACKNOWLEDGES THE TERMS REFERRED TO ABOVE UNDER "RESALE RESTRICTIONS IN CANADA"; (C) WHERE REQUIRED BY LAW, SUCH PURCHASER IS PURCHASING AS PRINCIPAL FOR ITS OWN ACCOUNT AND NOT AS AGENT; AND (D) SUCH PURCHASER OR ANY ULTIMATE PURCHASER FOR WHICH SUCH PURCHASER IS ACTING AS AGENT IS ENTITLED UNDER APPLICABLE CANADIAN SECURITIES LAWS TO PURCHASE SUCH UNITS WITHOUT THE BENEFIT OF A PROSPECTUS QUALIFIED UNDER SUCH SECURITIES LAWS, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (I) SUCH PURCHASER IS AN "ACCREDITED INVESTOR" AS DEFINED IN SECTION 1.1 OF NATIONAL INSTRUMENT 45-106 ("NI 45-106"), OR FULFILLS THE REQUIREMENTS OF SECTION 2.10 OF NI 45-106 (A "$150K PURCHASER") AND (II) IN THE CASE OF A PURCHASER RESIDENT IN ONTARIO, SUCH PURCHASER, OR ANY ULTIMATE PURCHASER FOR WHICH SUCH PURCHASER IS ACTING AS AGENT, IS AN "ACCREDITED INVESTOR" AS DEFINED IN NI 45-106, OR A $150K PURCHASER WHO IS PURCHASING THE UNITS FROM A REGISTERED INVESTMENT DEALER WITHIN THE MEANING OF SECTION 98 OF THE REGULATION TO THE SECURITIES ACT (ONTARIO).

IN ADDITION, EACH PURCHASER OF THE UNITS RESIDENT IN CANADA WILL BE DEEMED TO HAVE REPRESENTED TO KUE, THE GENERAL PARTNER AND THE AGENTS FROM WHOM A PURCHASE CONFIRMATION WAS RECEIVED, THAT SUCH PURCHASER: (A) HAS BEEN NOTIFIED BY KUE AND THE GENERAL PARTNER (I) THAT KUE AND THE GENERAL PARTNER ARE REQUIRED TO PROVIDE INFORMATION ("PERSONAL INFORMATION") PERTAINING TO THE PURCHASER AS REQUIRED TO BE DISCLOSED IN SCHEDULE I OF FORM 45-106F1 UNDER NI 45-106 (INCLUDING ITS NAME, ADDRESS, TELEPHONE NUMBER AND THE NUMBER AND VALUE OF ANY UNITS PURCHASED), WHICH FORM 45-106F1 IS REQUIRED TO BE FILED BY KUE AND THE GENERAL PARTNER UNDER NI 45-106; (II) THAT SUCH PERSONAL INFORMATION WILL BE DELIVERED TO THE ONTARIO SECURITIES COMMISSION (THE "OSC") IN ACCORDANCE WITH NI 45-106; (III) THAT SUCH PERSONAL INFORMATION IS BEING COLLECTED INDIRECTLY BY THE OSC UNDER THE AUTHORITY GRANTED TO IT UNDER THE SECURITIES LEGISLATION OF ONTARIO; (IV) THAT SUCH PERSONAL INFORMATION IS BEING COLLECTED FOR THE PURPOSES OF THE ADMINISTRATION AND ENFORCEMENT OF THE SECURITIES LEGISLATION OF ONTARIO; AND (V) THAT THE PUBLIC OFFICIAL IN ONTARIO WHO CAN ANSWER QUESTIONS

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ABOUT THE OSC'S INDIRECT COLLECTION OF SUCH PERSONAL INFORMATION IS THE ADMINISTRATIVE ASSISTANT TO THE DIRECTOR OF CORPORATE FINANCE AT THE OSC, SUITE 1903, BOX 5520 QUEEN STREET WEST, TORONTO, ONTARIO M5H 3S8, TELEPHONE: (416) 593-8086; AND (B) HAS AUTHORIZED THE INDIRECT COLLECTION OF THE PERSONAL INFORMATION BY THE OSC. FURTHER, THE PURCHASER ACKNOWLEDGES THAT ITS NAME, ADDRESS, TELEPHONE NUMBER AND OTHER SPECIFIED INFORMATION, INCLUDING THE NUMBER OF UNITS IT HAS PURCHASED AND THE AGGREGATE PURCHASE PRICE PAID BY PURCHASER, MAY BE DISCLOSED TO OTHER CANADIAN SECURITIES REGULATORY AUTHORITIES AND MAY BECOME AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH THE REQUIREMENTS OF APPLICABLE LAWS. BY PURCHASING UNITS, THE PURCHASER CONSENTS TO THE DISCLOSURE OF SUCH INFORMATION.

Language of documents in Canada. UPON RECEIPT OF THIS MEMORANDUM, EACH INVESTOR IN CANADA HEREBY CONFIRMS THAT IT HAS EXPRESSLY REQUESTED THAT ALL DOCUMENTS EVIDENCING OR RELATING IN ANY WAY TO THE SALE OF THE UNITS (INCLUDING FOR GREATER CERTAINTY ANY PURCHASE CONFIRMATION OR ANY NOTICE) BE DRAWN UP IN THE ENGLISH LANGUAGE ONLY. *PAR LA RÉCEPTION DE CE DOCUMENT, CHAQUE INVESTISSEUR CANADIEN CONFIRME PAR LES PRÉSENTES QU'IL A EXPRESSÉMENT EXIGÉ QUE TOUS LES DOCUMENTS FAISANT FOI OU SE RAPPORTANT DE QUELQUE MANIÈRE QUE CE SOIT À LA VENTE DES VALEURS MOBILIÈRES DÉCRITES AUX PRÉSENTES (INCLUANT, POUR PLUS DE CERTITUDE, TOUTE CONFIRMATION D'ACHAT OU TOUT AVIS) SOIENT RÉDIGÉS EN ANGLAIS SEULEMENT.*

NOTICE TO RESIDENTS OF THE CAYMAN ISLANDS

CLASS A SHARES IN THE GENERAL PARTNER AND COMMON LP UNITS IN KUE MAY BE BENEFICIALLY OWNED BY PERSONS RESIDENT, DOMICILED, ESTABLISHED, INCORPORATED OR REGISTERED IN THE CAYMAN ISLANDS PURSUANT TO THE LAWS OF THE CAYMAN ISLANDS. THE GENERAL PARTNER AND KUE, HOWEVER, WILL NOT UNDERTAKE BUSINESS WITH THE PUBLIC IN THE CAYMAN ISLANDS OTHER THAN SO FAR AS MAY BE NECESSARY FOR THE CARRYING ON OF THE BUSINESS OF, AS APPLICABLE, THE GENERAL PARTNER OR KUE EXTERIOR TO THE ISLANDS. "PUBLIC" FOR THESE PURPOSES DOES NOT INCLUDE ANY EXEMPTED OR ORDINARY NON-RESIDENT COMPANY REGISTERED UNDER THE COMPANIES LAW OR A FOREIGN COMPANY REGISTERED PURSUANT TO PART IX OF THE COMPANIES LAW OR ANY SUCH COMPANY ACTING AS GENERAL PARTNER OF A PARTNERSHIP REGISTERED PURSUANT TO SECTION 9(1) OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2003 REVISION) OR ANY DIRECTOR OR OFFICER OF SUCH PARTNERSHIP ACTING IN SUCH CAPACITY OR THE TRUSTEE OF ANY TRUST REGISTERED OR CAPABLE OF REGISTRATION PURSUANT TO SECTION 74 OF THE TRUSTS LAW (2001 REVISION).

NOTICE TO RESIDENTS OF CHINA

THE INFORMATION CONTAINED IN THIS MEMORANDUM WILL NOT CONSTITUTE AN OFFER TO SELL ANY SECURITIES WITHIN THE PEOPLE'S REPUBLIC OF CHINA (WHICH, FOR SUCH PURPOSES, DOES NOT INCLUDE THE HONG KONG OR MACAU SPECIAL ADMINISTRATIVE REGIONS OR TAIWAN) (THE "PRC"). THIS MEMORANDUM AND THE INFORMATION CONTAINED HEREIN HAVE NOT BEEN APPROVED BY ANY RELEVANT GOVERNMENTAL AUTHORITIES IN THE PRC AND THE UNITS MAY NOT BE OFFERED FOR SALE IN THE PRC. PRC INVESTORS ARE RESPONSIBLE FOR OBTAINING ALL RELEVANT GOVERNMENT REGULATORY APPROVALS/LICENSES THEMSELVES, INCLUDING, BUT NOT LIMITED TO, ANY WHICH MAY BE REQUIRED FROM THE STATE ADMINISTRATION OF FOREIGN EXCHANGE, THE CHINA BANKING REGULATORY COMMISSION, AND/OR THE CHINA SECURITIES REGULATORY COMMISSION, AND COMPLYING WITH ALL RELEVANT PRC REGULATIONS, INCLUDING, BUT NOT LIMITED TO, ANY RELEVANT FOREIGN EXCHANGE REGULATIONS AND/OR FOREIGN INVESTMENT REGULATIONS.

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NOTICE TO RESIDENTS OF FRANCE

THE COMPANY AND THE AGENTS HAVE NOT OFFERED OR SOLD AND WILL NOT OFFER OR SELL, DIRECTLY OR INDIRECTLY, THE UNITS TO THE PUBLIC IN FRANCE, AND HAVE NOT DISTRIBUTED OR CAUSED TO BE DISTRIBUTED AND WILL NOT DISTRIBUTE OR CAUSE TO BE DISTRIBUTED TO THE PUBLIC IN FRANCE, THIS MEMORANDUM OR ANY OTHER OFFERING MATERIAL RELATING TO THE UNITS. SUCH OFFERS, SALES AND DISTRIBUTIONS HAVE BEEN AND SHALL ONLY BE MADE IN FRANCE TO (I) PROVIDERS OF INVESTMENT SERVICES RELATING TO PORTFOLIO MANAGEMENT FOR THE ACCOUNT OF THIRD PARTIES, AND/OR (II) QUALIFIED INVESTORS (INVESTISSEURS QUALIFIÉS), AND/OR (III) A RESTRICTED GROUP OF INVESTORS (CERCLE RESTREINT D'INVESTISSEURS), ALL AS DEFINED IN, AND IN ACCORDANCE WITH, ARTICLES L.411-1, L.411-2, D.411-1 AND D.411-2 OF THE FRENCH CODE MONÉTAIRE ET FINANCIER.

NOTICE TO RESIDENTS OF GERMANY

THE UNITS HAVE NOT BEEN AND WILL NOT BE REGISTERED OR APPROVED FOR PUBLIC OFFERING UNDER THE SECURITIES LAWS OF GERMANY. THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE SUBMITTED TO THE FEDERAL FINANCIAL SERVICES SUPERVISORY AUTHORITY (BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT) FOR APPROVAL AS A PROSPECTUS AND NO PROSPECTUS HAS BEEN OR WILL BE PUBLISHED IN GERMANY. THEREFORE, THE UNITS MAY BE OFFERED AND SOLD IN THE TERRITORY OF THE FEDERAL REPUBLIC OF GERMANY ONLY IF (I) LESS THAN 20 UNITS ARE OFFERED IN GERMANY, (II) THE PRICE PER OFFERED UNIT IS AT LEAST €200,000 FOR EACH OFFEREE, (III) THE OFFER IS TO A "RESTRICTED CIRCLE OF PERSONS" AS THIS TERM IS INTERPRETED BY THE BAFIN AND THE GERMAN COURTS, OR (IV) THE OFFER IS TO INVESTORS WHO PURCHASE OR SELL SECURITIES OR INVESTMENTS (VERMÖGENSANLAGEN) AS DEFINED IN THE GERMAN SALES PROSPECTUS ACT (VERKAUFSPROSPEKTGESETZ) FOR THEIR OWN ACCOUNT OR THE ACCOUNT OF THIRD PARTIES AS PART OF THEIR PROFESSION OR TRADE. THIS MEMORANDUM AND ANY OTHER DOCUMENT RELATING TO THE UNITS, AS WELL AS INFORMATION CONTAINED THEREIN, MAY NOT BE SUPPLIED TO THE PUBLIC IN GERMANY OR USED IN CONNECTION WITH ANY OFFER FOR SUBSCRIPTION OR SALE OF THE UNITS TO THE PUBLIC IN GERMANY. THIS MEMORANDUM AND OTHER OFFERING MATERIALS RELATING TO THE OFFER OF THE UNITS ARE STRICTLY CONFIDENTIAL AND MAY NOT BE DISTRIBUTED TO ANY PERSON OR ENTITY OTHER THAN THE RECIPIENTS HEREOF.

NOTICE TO RESIDENTS OF HONG KONG

WARNING

THE CONTENTS OF THIS MEMORANDUM HAVE NOT BEEN REVIEWED BY ANY REGULATORY AUTHORITY IN HONG KONG. YOU ARE ADVISED TO EXERCISE CAUTION IN RELATION TO THE OFFER. IF YOU ARE IN ANY DOUBT ABOUT ANY OF THE CONTENTS OF THIS MEMORANDUM, YOU SHOULD OBTAIN INDEPENDENT PROFESSIONAL ADVICE.

NOTICE TO RESIDENTS OF ICELAND

THIS MEMORANDUM HAS BEEN ISSUED TO YOU FOR YOUR PERSONAL USE ONLY AND EXCLUSIVELY FOR THE PURPOSES OF THE INVESTMENT SCHEME. ACCORDINGLY, THIS MEMORANDUM MAY NOT BE USED FOR ANY OTHER PURPOSE NOR PASSED ON TO ANY OTHER PERSON IN ICELAND. THE SECURITIES OFFERING DESCRIBED IN THIS MEMORANDUM IS AN UNREGULATED INVESTMENT SCHEME. THE SECURITIES WHICH ARE THE OBJECT OF THIS MEMORANDUM ARE NOT REGISTERED FOR PUBLIC DISTRIBUTION IN ICELAND WITH THE FINANCIAL SUPERVISORY AUTHORITY PURSUANT TO THE ICELANDIC ACT ON SECURITIES TRANSACTIONS NO. 33/2003 OR THE ICELANDIC ACT ON UCITS-FUNDS AND OTHER INVESTMENT FUNDS NO. 30/2003 AND SUPPLEMENTARY REGULATIONS. THE UNITS MAY NOT BE OFFERED OR SOLD BY MEANS OF THIS MEMORANDUM OR ANYWAY LATER RESOLD TO

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OTHER THAN ENTITIES OR PERSONS DEFINED AS INSTITUTIONAL INVESTORS IN THE MEANING OF ITEM NO. 7. IN ARTICLE 2 OF THE ICELANDIC ACT ON SECURITIES TRANSACTIONS AND THE REGULATION OF THE TRANSACTIONS OF SECURITIES NO. 233/2003. ANY RESALE OF THE UNITS IN ICELAND WILL NEED TO TAKE PLACE IN ACCORDANCE WITH THE PROVISIONS OF THE ICELANDIC ACT ON SECURITIES TRANSACTIONS No. 33/2003 AS AMENDED AND ANY APPLICABLE LAWS OR REGULATIONS OF ICELAND.

NOTICE TO RESIDENTS OF INDIA

THE ISSUANCE OF THE UNITS IS BEING MADE STRICTLY ON A PRIVATE PLACEMENT BASIS. THIS MEMORANDUM IS NOT A PROSPECTUS OR A STATEMENT IN LIEU OF A PROSPECTUS. IT IS NOT, AND SHOULD NOT BE DEEMED TO CONSTITUTE AN OFFER TO THE PUBLIC IN GENERAL.

THE INFORMATION CONTAINED IN THIS MEMORANDUM IS BELIEVED BY THE COMPANY TO BE ACCURATE IN ALL MATERIAL RESPECTS AS OF THE DATE HEREOF. THE COMPANY DOES NOT UNDERTAKE TO UPDATE THIS MEMORANDUM TO REFLECT SUBSEQUENT EVENTS. THIS MEMORANDUM HAS BEEN PREPARED TO PROVIDE GENERAL INFORMATION ON THE COMPANY TO POTENTIAL INVESTORS EVALUATING THE PROPOSAL TO SUBSCRIBE FOR THE UNITS COVERED BY THIS MEMORANDUM AND IT DOES NOT PURPORT TO CONTAIN ALL THE INFORMATION THAT ANY SUCH POTENTIAL INVESTOR MAY REQUIRE. POTENTIAL INVESTORS SHOULD CONDUCT THEIR OWN DUE DILIGENCE, INVESTIGATION AND ANALYSIS OF THE COMPANY.

PRIOR TO APPLYING FOR THE UNITS, INVESTORS SHOULD VERIFY IF THEY HAVE THE NECESSARY POWER AND COMPETENCE TO APPLY FOR THE UNITS UNDER THEIR CONSTITUTIONAL DOCUMENTS AS WELL AS ALL RELEVANT LAWS AND REGULATIONS IN FORCE IN INDIA. THEY SHOULD ALSO CONSULT THEIR OWN TAX ADVISORS ON THE TAX IMPLICATIONS OF THE ACQUISITION, OWNERSHIP AND SALE OF THE UNITS, AND INCOME ARISING THEREON.

ALTHOUGH THE INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM SOURCES THAT ARE RELIABLE TO THE BEST OF THE AGENTS' KNOWLEDGE AND BELIEF, THE AGENTS MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED HEREIN OR OTHERWISE PROVIDED BY THE AGENT. NEITHER THE AGENTS NOR ANY OFFICER OR EMPLOYEE OF THE AGENTS ACCEPT ANY LIABILITY WHATSOEVER FOR ANY DIRECT OR CONSEQUENTIAL LOSS ARISING FROM ANY USE OF THIS MEMORANDUM OR ITS CONTENTS.

NOTICE TO RESIDENTS OF ITALY

THE OFFERING OF THE UNITS IN THE REPUBLIC OF ITALY ("ITALY") HAS NOT BEEN AUTHORISED BY THE COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA ("CONSOB") PURSUANT TO THE ITALIAN SECURITIES LEGISLATION AND, ACCORDINGLY:

(I) THE UNITS CANNOT BE OFFERED, SOLD OR DELIVERED IN ITALY IN AN INVESTMENT SOLICITATION ("SOLLECITAZIONE ALL'INVESTIMENTO") WITHIN THE MEANING OF ARTICLE 1, PARAGRAPH 1, LETTER (T) OF LEGISLATIVE DECREE NO. 58 OF 24 FEBRUARY 1998, AS AMENDED ("DECREE 58/98"),

(II) THE UNITS CANNOT BE OFFERED, SOLD AND/OR DELIVERED, NOR ANY DOCUMENT RELATING TO THE UNITS CAN BE DISTRIBUTED, EITHER IN THE PRIMARY OR SECONDARY MARKET, TO INDIVIDUALS RESIDENT IN ITALY, AND

(III) ANY OFFER, SALE AND/OR DELIVERY OF THE UNITS AND DISTRIBUTION OF COPIES OF ANY DOCUMENT RELATING TO THE UNITS IN ITALY WILL ONLY BE:

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(A) MADE TO ITALIAN INSTITUTIONAL INVESTORS ("INVESTITORI ISTITUZIONALI"), AS DEFINED IN ARTICLE 100 OF DECREE 58/98 BY REFERENCE TO ARTICLE 31.2 OF CONSOB REGULATION NO. 11522 OF 1 JULY 1998, AS AMENDED ("REGULATION 11522/98");

(B) MADE IN COMPLIANCE WITH ARTICLE 129 OF THE LEGISLATIVE DECREE NO. 385 OF 1 SEPTEMBER 1993, AS AMENDED ("DECREE 385/93"), AND THE IMPLEMENTING INSTRUCTIONS OF THE BANK OF ITALY, IF APPLICABLE, PURSUANT TO WHICH THE ISSUE OR PLACEMENT OF SECURITIES IN ITALY IS SUBJECT TO PRIOR NOTIFICATION TO THE BANK OF ITALY, UNLESS AN EXEMPTION, DEPENDING, INTER ALIA, ON THE AMOUNT OF THE ISSUE AND THE CHARACTERISTICS OF THE SECURITIES, APPLIES;

(C) MADE IN COMPLIANCE WITH ANY OTHER ITALIAN SECURITIES, TAX AND EXCHANGE CONTROL AND OTHER APPLICABLE LAWS AND REGULATIONS AND ANY OTHER APPLICABLE REQUIREMENT OR LIMITATION WHICH MAY BE IMPOSED BY CONSOB, THE BANK OF ITALY OR ANY OTHER COMPETENT ITALIAN AUTHORITY; AND

(D) MADE BY AN INVESTMENT FIRM, BANK OR FINANCIAL INTERMEDIARY PERMITTED TO CONDUCT SUCH ACTIVITIES IN ITALY IN ACCORDANCE WITH DECREE 58/98, DECREE 385/93, REGULATION 11522/98 AND ANY OTHER APPLICABLE LAWS AND REGULATIONS.

NOTICE TO RESIDENTS OF JAPAN

THE OFFERING OF THE UNITS HEREUNDER HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES AND EXCHANGE LAW OF JAPAN. CONSEQUENTLY, THE UNITS MAY NOT BE OFFERED, SOLD, RESOLD OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, IN JAPAN OR TO OR FOR THE ACCOUNT OF ANY RESIDENT OF JAPAN, EXCEPT PURSUANT TO AND IN COMPLIANCE WITH APPLICABLE JAPANESE LAWS AND REGULATIONS. THE INVESTORS SHOULD FURTHER NOTE THAT PURSUANT TO THE PARTNERSHIP AGREEMENT THE UNITS MAY ONLY BE TRANSFERRED IN WHOLE AND NOT IN PART AND THAT ANY SUCH TRANSFER WILL REQUIRE A PRIOR WRITTEN CONSENT OF THE GENERAL PARTNER.

NOTICE TO RESIDENTS OF JERSEY

NOTHING IN THIS MEMORANDUM, NOR ANYTHING COMMUNICATED TO HOLDERS OR POTENTIAL HOLDERS OF SECURITIES BY THE COMPANY OR THE AGENTS IS INTENDED TO CONSTITUTE OR SHOULD BE CONSTRUED AS ADVICE ON THE MERITS OF THE PURCHASE OF OR SUBSCRIPTION FOR THE UNITS OR THE EXERCISE OF ANY RIGHTS ATTACHED THERETO FOR THE PURPOSES OF THE FINANCIAL SERVICES (JERSEY) LAW 1998, AS AMENDED.

NOTICE TO RESIDENTS OF KUWAIT

THIS OFFERING HAS NOT BEEN APPROVED BY THE KUWAIT CENTRAL BANK OR THE KUWAIT MINISTRY OF COMMERCE AND INDUSTRY, NOR HAS THE COMPANY RECEIVED AUTHORIZATION OR LICENSING FROM THE KUWAIT CENTRAL BANK OR THE KUWAIT MINISTRY OF COMMERCE AND INDUSTRY TO MARKET OR SELL THE UNITS WITHIN KUWAIT. FURTHERMORE, THIS MEMORANDUM DOES NOT CONSTITUTE THE MARKETING OR OFFERING OF SECURITIES IN KUWAIT PURSUANT TO THE KUWAITI SECURITIES LAW (LAW NO. 31 OF 1990, AS AMENDED).

NOTICE TO RESIDENTS OF MEXICO

THE UNITS HAVE NOT BEEN REGISTERED WITH THE NATIONAL REGISTRY OF SECURITIES (*REGISTRO NACIONAL DE VALORES*) MAINTAINED BY THE MEXICAN NATIONAL BANKING AND SECURITIES COMMISSION (*COMISION NACIONAL BANCARIA Y DE VALORES*) AND MAY NOT BE OFFERED OR SOLD PUBLICLY IN MEXICO. THIS OFFER DOES NOT CONSTITUTE A PUBLIC OFFER UNDER THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*). THIS PRIVATE OFFER AND ALL OTHER INFORMATION AS CONTAINED IN THIS MEMORANDUM ARE EXCLUSIVELY FOR THE BENEFIT OF AND DISTRIBUTION TO INSTITUTIONAL OR HIGH NET

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WORTH INVESTORS. THIS MEMORANDUM AND OTHER OFFERING MATERIALS MAY NOT BE PUBLICLY DISTRIBUTED IN MEXICO.

NOTICE TO RESIDENTS OF MONACO

NEITHER THIS MEMORANDUM NOR ANY OTHER OFFERING MATERIAL RELATING TO THE UNITS MAY BE AVAILABLE TO THE PUBLIC OR USED IN CONNECTION WITH ANY OTHER OFFER FOR SUBSCRIPTION OR SALE OF THE UNITS IN THE PRINCIPALITY OF MONACO, AND THE UNITS MAY NOT BE ISSUED, OFFERED OR OTHERWISE SOLD IN THE PRINCIPALITY OF MONACO.

NOTICE TO RESIDENTS OF THE NETHERLANDS

THE UNITS MAY ONLY BE OFFERED, DIRECTLY OR INDIRECTLY, IN THE NETHERLANDS TO ENTITIES WHICH (i) ARE PROFESSIONAL MARKET PARTIES AS DEFINED IN ARTICLE I-C, 1ST PARAGRAPH, UNDER A OF THE EXEMPTION REGULATION ISSUED PURSUANT TO ARTICLE 4 OF THE ACT ON THE SUPERVISION OF SECURITIES TRADE (WET TOEZICHT EFFECTENVERKEER 1995) AND (ii) WHICH TRADE OR INVEST IN INVESTMENT OBJECTS IN THE CONDUCT OF A PROFESSION OR BUSINESS WITHIN THE MEANING OF ARTICLE I OF THE EXEMPTION REGULATION OF 9 OCTOBER 1990 ISSUED PURSUANT TO ARTICLE 14 OF THE INVESTMENT INSTITUTION SUPERVISION ACT (WET TOEZICHT BELEGGINGSINSTELLINGEN OF JUNE 27, 1990). THE UNITS MAY NOT OTHERWISE BE OFFERED, DIRECTLY OR INDIRECTLY, IN THE NETHERLANDS.

NOTICE TO RESIDENTS OF QATAR

THE UNITS HAVE NOT BEEN OFFERED, SOLD OR DELIVERED, AND WILL NOT BE OFFERED, SOLD OR DELIVERED AT ANY TIME, DIRECTLY OR INDIRECTLY, IN THE STATE OF QATAR IN A MANNER THAT WOULD CONSTITUTE A PUBLIC OFFERING. THIS MEMORANDUM HAS NOT BEEN REVIEWED OR REGISTERED WITH QATARI GOVERNMENT AUTHORITIES, WHETHER UNDER LAW. NO. 25 (2002) CONCERNING INVESTMENT FUNDS, CENTRAL BANK RESOLUTION NO. 15 (1997), AS AMENDED, OR ANY ASSOCIATED REGULATIONS. THEREFORE, THIS MEMORANDUM IS STRICTLY PRIVATE AND CONFIDENTIAL, AND IS BEING ISSUED TO A LIMITED NUMBER OF SOPHISTICATED INVESTORS, AND MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE, NOR PROVIDED TO ANY PERSON OTHER THAN RECIPIENT THEREOF.

NOTICE TO RESIDENTS OF RUSSIA

UNDER RUSSIAN LAW, THE UNITS ARE SECURITIES OF A FOREIGN ISSUER. NEITHER THE ISSUE OF THE UNITS NOR A SECURITIES PROSPECTUS IN RESPECT OF THE UNITS HAS BEEN, OR IS INTENDED TO BE, REGISTERED WITH THE FEDERAL SERVICE FOR FINANCIAL MARKETS OF THE RUSSIAN FEDERATION, AND HENCE THE UNITS ARE NOT ELIGIBLE FOR INITIAL OFFERING OR PUBLIC CIRCULATION IN THE RUSSIAN FEDERATION. THE INFORMATION PROVIDED IN THIS MEMORANDUM IS NOT AN OFFER, OR AN INVITATION TO MAKE OFFERS, TO SELL, EXCHANGE OR OTHERWISE TRANSFER THE UNITS IN THE RUSSIAN FEDERATION OR TO OR FOR THE BENEFIT OF ANY RUSSIAN PERSON OR ENTITY.

EACH OF THE AGENTS HAS REPRESENTED AND AGREED THAT IT HAS NOT OFFERED OR SOLD AND WILL NOT OFFER OR SELL ANY UNITS TO OR FOR THE BENEFIT OF ANY PERSONS RESIDENT, INCORPORATED, ESTABLISHED OR HAVING THEIR USUAL RESIDENCE IN RUSSIA OR TO ANY PERSON LOCATED WITHIN THE TERRITORY OF RUSSIA UNLESS AND TO THE EXTENT OTHERWISE PERMITTED UNDER RUSSIAN LAW.

NOTICE TO RESIDENTS OF SAUDI ARABIA

THIS MEMORANDUM MAY NOT BE DISTRIBUTED IN THE KINGDOM EXCEPT TO THE EXTENT PERMITTED UNDER THE RULES GOVERNING EXEMPT OFFERS AS SET FORTH IN THE OFFERS

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OF SECURITIES REGULATIONS (THE "REGULATIONS"). IT SHOULD NOT BE DISTRIBUTED TO ANY OTHER PERSON, OR RELIED UPON BY ANY OTHER PERSON.

THE CAPITAL MARKET AUTHORITY DOES NOT TAKE ANY RESPONSIBILITY FOR THE CONTENTS OF THIS MEMORANDUM, DOES NOT MAKE ANY REPRESENTATION AS TO ITS ACCURACY OR COMPLETENESS, AND EXPRESSLY DISCLAIMS ANY LIABILITY WHATSOEVER FOR ANY LOSS ARISING FROM, OR INCURRED IN RELIANCE UPON, ANY PART OF THIS MEMORANDUM. PROSPECTIVE PURCHASERS OF THE SECURITIES OFFERED HEREBY SHOULD CONDUCT THEIR OWN DUE DILIGENCE ON THE ACCURACY OF THE INFORMATION RELATING TO THE SECURITIES. IF YOU DO NOT UNDERSTAND THE CONTENTS OF THIS DOCUMENT YOU SHOULD CONSULT AN AUTHORIZED FINANCIAL ADVISER.

NOTICE TO RESIDENTS OF SINGAPORE

As to the Class A Shares

THIS MEMORANDUM HAS NOT BEEN REGISTERED AS A PROSPECTUS WITH THE MONETARY AUTHORITY OF SINGAPORE. ACCORDINGLY, THIS MEMORANDUM AND ANY OTHER DOCUMENT OR MATERIAL IN CONNECTION WITH THE OFFER OR SALE, OR INVITATION FOR SUBSCRIPTION OR PURCHASE, OF CLASS A SHARES MAY NOT BE CIRCULATED OR DISTRIBUTED, NOR MAY SUCH CLASS A SHARES BE OFFERED OR SOLD, OR BE MADE THE SUBJECT OF AN INVITATION FOR SUBSCRIPTION OR PURCHASE, WHETHER DIRECTLY OR INDIRECTLY, TO PERSONS IN SINGAPORE OTHER THAN (I) TO AN INSTITUTIONAL INVESTOR UNDER SECTION 274 OF THE SECURITIES AND FUTURES ACT, CHAPTER 289 OF SINGAPORE (THE "SFA"), (II) TO A RELEVANT PERSON, OR ANY PERSON PURSUANT TO SECTION 275(1A), AND IN ACCORDANCE WITH THE CONDITIONS, SPECIFIED IN SECTION 275 OF THE SFA OR (III) OTHERWISE PURSUANT TO, AND IN ACCORDANCE WITH THE CONDITIONS OF, ANY OTHER APPLICABLE PROVISION OF THE SFA.

WHERE SUCH CLASS A SHARES ARE SUBSCRIBED OR PURCHASED UNDER SECTION 275 BY A RELEVANT PERSON WHICH IS:

(A) A CORPORATION (WHICH IS NOT AN ACCREDITED INVESTOR (AS DEFINED IN SECTION 4A OF THE SFA)) THE SOLE BUSINESS OF WHICH IS TO HOLD INVESTMENTS AND THE ENTIRE SHARE CAPITAL OF WHICH IS OWNED BY ONE OR MORE INDIVIDUALS, EACH OF WHOM IS AN ACCREDITED INVESTOR; OR

(B) A TRUST (WHERE THE TRUSTEE IS NOT AN ACCREDITED INVESTOR) WHOSE SOLE PURPOSE IS TO HOLD INVESTMENTS AND EACH BENEFICIARY OF THE TRUST IS AN INDIVIDUAL WHO IS AN ACCREDITED INVESTOR,

SHARES, DEBENTURES AND UNITS OF SHARES AND DEBENTURES OF THAT CORPORATION OR THE BENEFICIARIES' RIGHTS AND INTEREST (HOWSOEVER DESCRIBED) IN THAT TRUST SHALL NOT BE TRANSFERRED WITHIN 6 MONTHS AFTER THAT CORPORATION OR THAT TRUST HAS ACQUIRED SUCH CLASS A SHARES PURSUANT TO AN OFFER MADE UNDER SECTION 275 EXCEPT:

(1) TO AN INSTITUTIONAL INVESTOR (FOR CORPORATIONS, UNDER SECTION 274 OF THE SFA) OR TO A RELEVANT PERSON DEFINED IN SECTION 275(2) OF THE SFA, OR TO ANY PERSON PURSUANT TO AN OFFER THAT IS MADE ON TERMS THAT SUCH SHARES, DEBENTURES AND UNITS OF SHARES AND DEBENTURES OF THAT CORPORATION OR SUCH RIGHTS AND INTEREST IN THAT TRUST ARE ACQUIRED AT A CONSIDERATION OF NOT LESS THAN S$200,000 (OR ITS EQUIVALENT IN A FOREIGN CURRENCY) FOR EACH TRANSACTION, WHETHER SUCH AMOUNT IS TO BE PAID FOR IN CASH OR BY EXCHANGE OF SECURITIES OR OTHER ASSETS, AND FURTHER FOR CORPORATIONS, IN ACCORDANCE WITH THE CONDITIONS SPECIFIED IN SECTION 275 OF THE SFA;

(2) WHERE NO CONSIDERATION IS OR WILL BE GIVEN FOR THE TRANSFER; OR

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(3) WHERE THE TRANSFER IS BY OPERATION OF LAW.

As to the Common LP Units

THIS MEMORANDUM HAS NOT BEEN REGISTERED AS A PROSPECTUS WITH THE MONETARY AUTHORITY OF SINGAPORE AND THIS OFFERING IS NOT REGULATED BY ANY FINANCIAL SUPERVISORY AUTHORITY PURSUANT TO ANY LEGISLATION IN SINGAPORE. YOU SHOULD ACCORDINGLY CONSIDER CAREFULLY WHETHER THE INVESTMENT IS SUITABLE FOR YOU.

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NO PUBLIC OFFERING OF THE COMMON LP UNITS WILL BE CARRIED OUT IN THE SPANISH TERRITORY, PURSUANT TO THE DEFINITION OF PUBLIC OFFER CONTAINED IN ARTICLE 30 BIS OF THE SECURITIES MARKET LAW 24/1988, OF JULY 28. CONSEQUENTLY, THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE VERIFIED OR REGISTERED WITH THE SPANISH SECURITIES MARKET COMMISSION (COMISION NACIONAL DEL MERCADO DE VALORES, "CNMV").

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THE UNITS ARE BEING OFFERED BY WAY OF A PRIVATE PLACEMENT TO A LIMITED NUMBER OF INVESTORS WITHOUT ANY PUBLIC OFFERING IN OR FROM SWITZERLAND. THIS MEMORANDUM AND ANY OTHER OFFERING MATERIAL RELATING TO THE UNITS ARE INTENDED SOLELY FOR THE RECIPIENT; THE INFORMATION THEREIN IS STRICTLY CONFIDENTIAL AND THEREFORE MAY NOT BE DISTRIBUTED TO ANY THIRD PARTY OR THE PUBLIC IN GENERAL.

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THE AGENTS ARE NOT LICENSED BROKERS, DEALERS, FINANCIAL ADVISORS OR INVESTMENT ADVISORS UNDER THE LAWS APPLICABLE IN THE UAE, AND DO NOT ADVISE INDIVIDUALS RESIDENT IN THE UAE AS TO THE APPROPRIATENESS OF INVESTING IN OR PURCHASING OR SELLING SECURITIES OR OTHER FINANCIAL PRODUCTS. NOTHING CONTAINED IN THIS MEMORANDUM IS INTENDED TO CONSTITUTE INVESTMENT, LEGAL, TAX, ACCOUNTING OR OTHER PROFESSIONAL ADVICE IN, OR IN RESPECT OF, THE UAE.

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NOTICE TO RESIDENTS OF THE UNITED KINGDOM

THE COMPANY IS AN UNREGULATED COLLECTIVE INVESTMENT SCHEME FOR THE PURPOSES OF THE FINANCIAL SERVICES AND MARKETS ACT 2000 ("FSMA"), THE PROMOTION OF WHICH IN THE UNITED KINGDOM IS RESTRICTED BY THE FSMA. IF MADE BY A PERSON WHO IS NOT AN AUTHORISED PERSON UNDER FSMA, THE ISSUE OR DISTRIBUTION OF THIS DOCUMENT IN THE UNITED KINGDOM MAY ONLY BE MADE TO AND DIRECTED AT PERSONS WHO (I) ARE INVESTMENT PROFESSIONALS FALLING WITHIN ARTICLE 19 OF THE FINANCIAL SERVICES AND MARKETS ACT 2000 (FINANCIAL PROMOTION) ORDER 2005; OR (II) ARE PERSONS TO WHOM THE PROMOTION MAY OTHERWISE BE LAWFULLY MADE. IF MADE BY A PERSON WHO IS AN AUTHORISED PERSON UNDER FSMA, THE ISSUE OR DISTRIBUTION OF THIS DOCUMENT IN THE UNITED KINGDOM MAY ONLY BE MADE TO AND DIRECTED AT PERSONS WHO (I) ARE INVESTMENT PROFESSIONALS WITHIN ARTICLE 14 OF THE FINANCIAL SERVICES AND MARKETS ACT 2000 (PROMOTION OF COLLECTIVE INVESTMENT SCHEMES) (EXEMPTIONS) ORDER 2001; OR (II) ARE PERSONS TO WHOM THE PROMOTION MAY OTHERWISE BE LAWFULLY MADE. TRANSMISSION OF THIS DOCUMENT TO ANY OTHER PERSON IN THE UNITED KINGDOM IS UNAUTHORISED AND MAY CONTRAVENE THE FSMA. IN THE UNITED KINGDOM, PARTICIPATION IN THE COMPANY IS AVAILABLE ONLY TO SUCH PERSONS AND PERSONS OF ANY OTHER DESCRIPTION SHOULD NOT RELY ON THIS DOCUMENT.

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NON-GAAP FINANCIAL MEASURES

EBITDA, Adjusted EBITDA and Adjusted EBITDAR (including pro forma presentations thereof) and the related ratios presented in this Memorandum are supplemental measures of our performance that are not required by, or presented in accordance with, generally accepted accounting principles in the U.S. ("GAAP"). EBITDA, Adjusted EBITDA and Adjusted EBITDAR are not measurements of our financial performance under GAAP and should not be considered as alternatives to net income, operating income or any other performance measures derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of our liquidity.

EBITDA represents net income before net interest expense, income tax expense, depreciation (including impairment charges) and amortization. Pro forma presentations of EBITDA have also added back KinderCare Learning Centers, Inc.'s ("KinderCare") discontinued operations, consistent with KLC's treatment of center closures and sales and KinderCare's historical presentation of EBITDA. Adjusted EBITDA represents EBITDA plus (i) expenses (minus gains) that we do not consider reflective of our ongoing operations after the KinderCare acquisition, as further described in this Memorandum and (ii) management fees which are subordinated to our obligations on our 7¾% senior subordinated notes (the "Notes") and which are added back in measuring our performance for purposes of our ability to incur debt under our indenture. Our actual and projected Adjusted EBITDA, where applicable, also exclude non-cash stock-based compensation expense, which is also excluded under our indenture; accruals under our stock appreciation rights ("SAR") plan; and accruals under our long term incentive plan, which are non-cash at the time of award and vest and become payable in three years subject to continued employment (with certain exceptions). Our pro forma Adjusted EBITDA for 2005 excludes restructuring and integration charges associated with the KinderCare acquisition and the cost of operating parallel organizations during the integration process, which management does not consider reflective of ongoing operations. Adjusted EBITDAR is Adjusted EBITDA plus rent expense. We present EBITDA, Adjusted EBITDA and Adjusted EBITDAR because we consider them to be important supplemental measures of our performance and believe they are frequently used by securities analysts, investors and other interested parties in the evaluation of issuers, many of which present EBITDA and/or Adjusted EBITDA and/or Adjusted EBITDAR when reporting their results.

We are basing our executive incentive compensation payments in part on our performance measured using Adjusted EBITDA including adjustments described herein. We also use financial measures similar to Adjusted EBITDA, though subject to certain different adjustments, in the senior credit facility that we entered into in connection with the KinderCare acquisition and the indenture governing the Notes to measure our compliance with covenants such as interest coverage and debt incurrence. Measures similar to Adjusted EBITDA are also widely used by us and others in our industry to evaluate and price potential acquisition candidates. For example, we evaluated the KinderCare acquisition and our 2003 acquisition of ARAMARK Educational Resources to a significant degree based on their historical and potential EBITDA, as adjusted for items we did not consider representative of post-acquisition operations. We believe EBITDA and Adjusted EBITDA facilitate operating performance comparisons from period to period and company to company by backing out potential differences caused by variations in capital structures (affecting relative interest expense), tax positions (such as the impact on periods or companies of changes in effective tax rates or net operating losses) and the age and book depreciation of facilities and equipment (affecting relative depreciation expense). We believe Adjusted EBITDAR is a useful measure of performance independent of occupancy costs.

We calculate Adjusted EBITDA by adjusting EBITDA to eliminate the impact of a number of items we do not consider indicative of our ongoing operations and for the other reasons noted above. For the reasons indicated herein, you are encouraged to evaluate each adjustment and whether you consider it appropriate. In addition, in evaluating Adjusted EBITDA and Adjusted EBITDAR, you should be aware that in the future we may incur expenses similar to the adjustments in the presentation of Adjusted EBITDA and Adjusted EBITDAR. Our presentation of Adjusted EBITDA and Adjusted EBITDAR should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

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EBITDA, Adjusted EBITDA and Adjusted EBITDAR have limitations as analytical tools, and you should not consider them in isolation, or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- they do not reflect our cash expenditures for capital expenditures or contractual commitments;
- they do not reflect the cost of our non-cash stock-based compensation or our SAR plan or long term incentive plan or the expense associated with allocating Profits Participation LP Units (as defined below) to employees;
- they do not reflect changes in, or cash requirements for, our working capital;
- they do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our indebtedness;
- they do not reflect management fees;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and our non-GAAP measures do not reflect cash requirements for such replacements or the related expense;
- they do not reflect the impact of earnings or charges resulting from the significant costs we have incurred in integrating KinderCare, and we are likely to incur significant integration costs in future acquisitions;
- other companies, including other companies in our industry, may calculate these measures differently than we do, limiting their usefulness as a comparative measure; and
- they do not comply with the requirements of Item 10(e) of Regulation S-K or Regulation G of the Securities and Exchange Commission ("SEC").

Because of these limitations, EBITDA, Adjusted EBITDA and Adjusted EBITDAR should not be considered as measures of discretionary cash available to us to invest in the growth of our business or reduce our indebtedness. We compensate for these limitations by relying on our GAAP results as well as these non-GAAP measures.

For more information, see our consolidated financial statements and the notes to those statements included elsewhere in this Memorandum.

FORWARD-LOOKING STATEMENTS

This Memorandum contains forward-looking statements, which involve risks and uncertainties. You can identify forward-looking statements because they contain words such as "anticipates," "expects," "should," 'intends," "plans," "believes," "seeks," "estimates," "will," "may," "approximately" and similar expressions which concern, among other things, the Company's results of operations, financial condition, liquidity, prospects, growth, strategies and the industry in which the Company operates. Examples include statements regarding anticipated growth in revenue, net income and EBITDA, expectations regarding the likelihood of recurrence of certain charges and gains, expectations regarding capital investments, and expectations regarding future cash generated from operations. These forward-looking statements are based on our management's current expectations, assumptions, estimates and projections about us and our industry. You are cautioned that actual results could differ from those

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anticipated by the forward-looking statements. Investors are cautioned not to place undue reliance on the projections contained in this Memorandum or other models and forecasts they may receive or discuss in connection with this offering.

Important factors that could cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by those statements include, but are not limited to, those discussed under "Risk Factors," elsewhere in this Memorandum. The following list represents some, but not necessarily all, of the factors that could cause actual results to differ from historical results or those anticipated or predicted by any forward-looking statements:

- we may be unable to identify, consummate or obtain favorable terms on acquisitions of businesses or interests therein, which is a principal component of our growth strategy;
- our international expansion strategy is untested, and our acquisition and development of non-U.S. businesses may not be successful;
- the loss of any of our key management employees could adversely affect our business;
- we have a substantial level of indebtedness and plan to incur additional debt;
- we face intense competition in the early childhood care and education services industry from numerous other types of providers;
- we may acquire companies that are not well-established or experiencing financial difficulties;
- we rely on the management teams of our subsidiaries, who may not be able to operate them in accordance with our plans;
- we may acquire minority interests in various companies (such as *k*12 Inc. ("*k*12")) and we may not be able to protect our interests adequately in respect of such investments;
- we or our subsidiaries may be unable to raise additional financing which may be needed to satisfy certain of our subsidiaries' working capital requirements;
- failure to comply with present or future applicable U.S. or foreign governmental regulation and licensing requirements could have a material adverse effect on our operations;
- activities of Knowledge Universe Learning Group LLC ("KULG"), the parent entity of the General Partner and/or its Principals may be competitive with the Company; conflicts of interest may arise with the Principals and their affiliates; the Company may not engage in certain businesses;
- litigation and adverse publicity concerning incidents at child care centers could hurt our reputation;
- our insurance policies may prove inadequate to cover claims, and we may be unable to maintain our existing coverage in the future at reasonable prices;
- factors beyond our control, such as economic conditions, could affect demand for our child care services;

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- a loss or reduction of government funding for child care assistance programs or food reimbursement programs could adversely affect us;

- a termination or reduction of tax credits for child care could have a material adverse effect on our business;

- if we (or our subsidiaries) are unable to attract and retain sufficient qualified employees, if minimum wage rates increase or if our employees (or our subsidiaries' employees) unionize, our results of operations may be adversely affected;

- our results of operations could be adversely affected if environmental contamination is discovered on any of our properties; and

- material weaknesses in KLC's internal controls discovered during KLC's fiscal year 2005 audit.

BACKGROUND DATA

Industry and market data used throughout this Memorandum is based on independent industry publications, government publications, reports by market research firms and other published independent sources. Some data is also based on our good faith estimates, which are derived from our review of internal surveys and independent sources. Such information necessarily incorporates significant assumptions as to factual or other matters. Although we believe these sources are reliable, we have not independently verified the information from third party-sources or the assumptions on which such information is based and cannot guarantee its accuracy or completeness. Some of the industry data contained in this Memorandum has not been updated because we have been unable to obtain more recent data. Although we are not aware of trends contrary to those reflected in such data (except as otherwise stated), we cannot assure you that such data are indicative of current trends.

TRADEMARKS

The intellectual property portfolio of the Company includes registered and unregistered trademarks and service marks and collective trademarks that distinguish the services and products that it offers from those services and products offered by other companies.

In addition, the Company has applied to register certain other trademarks, service marks and collective trademarks in the U.S. and other countries, and likely will seek to register additional marks in the future. A federal registration in the U.S. is effective for ten years and may be renewed for ten-year periods perpetually, subject only to required filings based on continued use of the mark by a registrant. It is possible that some of these applications to register additional marks will not result in registrations.

KLC's primary trademarks are "Knowledge Learning Corporation," "Children's World," "Knowledge Beginnings," "Children's Discovery Centers" and "Medallion School Partnerships."

KinderCare owns and uses various registered and unregistered trademarks and service marks covering the name "KinderCare," its schoolhouse logo and a number of other names, slogans and designs, including "KinderCare at Work" and "Mulberry."

*k*12's primary trademarks are the *k*12 star logo, the word mark and design, which are licensed from an entity controlled by the Principals.

All other product and company names referred to in this Memorandum are trademarks and registered trademarks of their respective companies.

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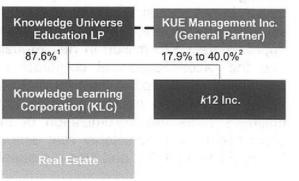
1. EXECUTIVE SUMMARY

The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this Memorandum. You should carefully consider the information set forth under "Risk Factors". The term "'KUE" refers only to Knowledge Universe Education L.P., a Cayman Islands exempted limited partnership. The terms "Knowledge Universe Education", the "Company", "we", "us" and "our" refer to KUE and, where applicable, its subsidiaries, and do not refer to the Agents. In November 2005, KLC separated its education operations ("KLC OpCo") from its real estate assets ("KLC PropCo").

1.1. Company Overview

KUE is the third largest for-profit education company in the world and the largest for-profit education company in the pre-school to 12th grade segment ("pre-K-12") in the world. While the Company's operations are currently based within the U.S., the proceeds from this transaction will be used primarily to expand KUE's education platform both globally and across the pre-K-12 education continuum. KUE's existing portfolio of assets consists of:



(i) KLC OpCo, the leading early childhood education ("ECE") company with 2,507 locations in 39 states and the District of Columbia and nearly two and a half times larger than its next closest competitor in terms of revenue;

(ii) KLC PropCo, one of the largest education based real estate portfolios in the U.S. consisting of 845 early childhood centers located in 37 states; and

(iii) A significant interest in *k*12, an online curriculum provider and kindergarten through 12th grade management company, currently serving over 25,000 students as the largest operator of online virtual schools in the U.S.

The principal owners of KUE are Michael Milken, Lowell Milken and Steven Green (collectively the "Principals"). Michael Milken and Lowell Milken each has more than two decades of experience in the education sector through involvement in several for-profit and not-for-profit initiatives. Steven Green, former U.S. ambassador to Singapore, has more than two decades of experience as an international industrialist leading major corporate restructurings and expansions in manufacturing, housing, consumer products, retail and real estate enterprises. The Company represents the Principals' sole vehicle for equity investment opportunities in the pre-K-12 sector going forward.

The Principals founded the Company and its affiliated companies over the past decade based on their vision of a world where competition for human capital[3] is becoming the driving force of economic prosperity. To remain competitive in the world economy, countries will be forced to invest heavily in the development of their human capital. The Principals believe that an investment made in an individual's education, especially at a young age, is the most effective way to build human capital and thereby increase that individual's lifelong productivity. As the largest for-profit provider of ECE in the world, the Company is well positioned to capitalize on these trends.

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[1] *The 12.4% minority position is held by various investors.*

[2] *KUE's ownership varies depending on the liquidation value or sale value of k12 and according to the preference of the various securities KUE owns. At higher valuations, KUE's percentage ownership is lower. See "k12 Inc. (k12) – k12 Equity."*

[3] *The economic theory of Human Capital Policy was first published by University of Chicago professor James Heckman in Human Capital Policy, dated August 2002.*

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Education is one of the largest sectors in the world, representing approximately 5% of global gross national income of $48 trillion.[4] In 2005 in the U.S. alone, education was a $1 trillion market.[5] Education is still predominantly provided by public / governmental entities in most countries including the U.S. KUE believes that the industry will converge towards a more balanced public / private system, similar to the evolution observed in the 20th century in other major industries such as healthcare, infrastructure and telecommunications.

The Company's strategy is to grow its existing platforms both domestically and internationally and to expand its assets globally across the pre-K-12 education continuum. In addition to its current investments in ECE and online curriculum, KUE will seek to expand by acquiring education companies offering services or products that can complement its current offering. KUE believes that owning a diversified portfolio of assets in the pre-K-12 education space will allow it to leverage content and best practices across multiple constituencies and to multiple markets. KUE's strategy in U.S. ECE is to expand its existing platform through the opening of new centers, opportunistic acquisitions of smaller competitors and the sale of education-related products and services through existing channels. Internationally, KUE has identified several near-term opportunities to expand into Europe, the Middle-East and Asia, with some of these opportunities in advanced stages of preparation.

Management has a history of successfully growing through acquisitions. In May 2003, KLC acquired Aramark Educational Resources ("AER"), a company three times its size in terms of revenue. Management completed the integration of AER in approximately 12 months, realizing approximately $10 million in net annual synergies and improving operational performance. In January 2005, the Company acquired KinderCare, the largest provider of ECE services in the U.S. at the time. Management achieved approximately $25 million in net annualized synergies through the closing of under-performing centers and the rationalization of corporate overhead. In November 2005, KLC separated its education operations (KLC OpCo) from its real estate assets (KLC PropCo). Management believes this division allows KLC OpCo management to focus on the core business of operating and growing the ECE business while the maximization of the valuable educational real estate portfolio is managed and expanded by a professional real estate firm, Greenstreet Real Estate Partners (formerly Greenstreet Realty Partners, L.P.), and also represents management's view of KLC's component businesses.

Management believes that KUE presents an attractive financial profile with its combination of businesses: (i) KLC OpCo, which generated $1.48 billion in pro forma revenue and $150 million in pro forma Adjusted EBITDA[6] in 2005, is projected to grow organically to $2.3 billion and $320 million by 2011, respectively and to generate operating cash flow growing from $72 million in 2005 to $214 million in 2011; (ii) a real estate portfolio in KLC PropCo that generated an additional $88 million in pro forma EBITDA in 2005; and (iii) an investment in *k*12, which continues to deliver top line growth in excess of 25% and has seen its revenue grow at a 133% compounded annual growth rate over the last three fiscal years (from $6.7 million in 2002 to $85.1 million in 2005).

1.2. Investment Rationale

1.2.1 Attractive Industry Characteristics

- **The global for-profit education market is large and growing**

[4] *Source: UNESCO Institute for Statistics database.*
[5] *Source: US Department of Education National Center for Education Statistics and Training Magazine and Harris Nesbitt research.*
[6] *Pro forma for the acquisition of KinderCare and the separation of KLC into KLC OpCo and KLC PropCo.*

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Education is one of the largest sectors in the world and represents a large portion of a country's investments

— Represents approximately 5% of global gross national income of $48 trillion. In the U.S. alone, education represents a $1 trillion market with for-profit education accounting for approximately $81 billion or 7.8% of the overall market.

— The pre-K-12 segment of the education market is approximately a $610 billion market, with for-profit pre-K-12 education accounting for approximately $37.4 billion, over 6.1% of the pre-K-12 market.[7]

The for-profit education sector is growing at an attractive rate

— U.S. education spending has grown at a stable compound annual growth rate ("CAGR") of 5.7% since 1993. The for-profit component of this industry (pre-K-12, post secondary and corporate training) is projected to grow faster than the overall historical industry growth rate, at a 7.4% annual rate, reflecting the increasing importance of for-profit operations in the sector, to reach a market size of $116 billion by 2010.[7]

— In addition, these estimates do not reflect the growing segment of direct to consumer educational materials such as supplemental tutoring, which represented an estimated $20 billion of additional spending in 2004.

■ **Increasing competition for human capital**

To remain competitive in the global economy, countries are investing heavily in the development of their human capital, especially at young ages

— According to the World Bank's World Education Indicators, worldwide enrollment rates in pre-primary education increased by 37% from 1995 to 2003.[8]

— KUE believes that education companies will become significantly more valuable as countries become increasingly aware of the competitive advantages afforded by education. Of the top 100 global companies by market cap, not a single education company is represented on the list.

As globalization of the economy and improving technologies flatten the playing field, demand for more standardized education across regions increases

— KUE believes that increasingly global education standards, enhanced workforce mobility and new technologies are catalysts of world competition for human capital.

■ **Several international growth opportunities**

The Company is starting to execute on its international development strategy

— In the near term, the Company is focusing on opportunities identified in the United Kingdom, Saudi Arabia, the United Arab Emirates and China. Depending on the state and organization of each country's education sector, KUE's development will be executed through cooperation with government authorities, outright acquisitions and/or the establishment of partnerships with key local players.

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[7] *Source: Harris Nesbitt, Education and Training, September 2005.*
[8] *Source: Education Trends in Perspective: Analysis of the World Education Indicators, 2005.*

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— These initiatives could provide three key regional platforms for further development and consolidation.

In the medium term, numerous opportunities for KUE should be generated by the increasing demand for quality for-profit educational offerings by governments and citizens around the world

— Competitive pressures for development of human capital, deficiencies of national education systems, growth of a middle-class in China, India and the Middle East, demand for English language offerings and changing demographics are some of the primary drivers of increased demand internationally.

— In China alone, 274 million children are under the age of 15, and 100 million are single-children under the age of 25, as a result of the one-child policy. These demographics result in large demand for education and increased spending capacity per child.

■ **Favorable demographic trends and customer behavior in the U.S.**

Growing number of working mothers

— According to the Bureau of Labor Statistics (BLS) estimates, women are expected to represent nearly 48% of the total U.S. workforce by 2012, up from 46.6% in 2002.[9]

— In the U.S., approximately 60% of mothers with children under the age of six are employed.

Increasing birth rate

— There are approximately 24 million children under the age of five in the U.S. today. According to the U.S. Census Bureau, absolute birth rates are going to continue to increase, and the population of children in the U.S. five and under is expected to increase to approximately 27 million by 2015.[10]

Essential nature of the service to the consumer

— As with healthcare, parents are primarily focused on the quality of the service that their child receives and the proximity of the center to their home or work; price is typically a secondary consideration. By relieving parents of the requirement to stay at home with their children, ECE allows both men and women to participate in the workforce and generate income for the household.

1.2.2 Compelling Business Profile

■ **KUE presents an attractive financial profile**

For the fiscal year ended December 31, 2005, KLC OpCo had operations in 39 states and Washington D.C. and generated pro forma revenue of $1.48 billion

— With organic growth projected to be in excess of 5% per annum through 2011, geographic diversity and double-digit Adjusted EBITDA margins, KLC OpCo can generate attractive returns.

— KLC OpCo generates strong operating cash flow (48% of 2005 pro forma Adjusted EBITDA) which provides significant resources to fund investment and support equity return-enhancing leverage, a

[9] *Source: Harris Nesbitt, Education and Training, September 2005.*
[10] *Source: Population Projections Branch, U.S. Census Bureau, "U.S. Interim Projections by Age, Sex, Race and Hispanic Origin," May 2004.*

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capability that is expected to increase in line with the 13.5% Adjusted EBITDA CAGR projected until 2011.

k12 continues to grow at an impressive rate, with annual enrollment growth projected in excess of 25% over the next two years

— Many of *k*12's direct costs are semi-fixed in nature (*e.g.*, school administration) creating strong economies of scale as this business continues to grow.

— With $70 million invested in the development of the platform for kindergarten to 9th grade classes, extension of the offering into new states and schools is expected to be achieved at relatively low costs.

■ **Leading market position in early childhood education with significant brand equity**

Leading market positions in early childhood education and before and after school programs

— Largest U.S. provider of ECE services (1,934 centers).

KLC OpCo's U.S. Market Position

Organization	Capacity	LTM Revenue[1]	Centers	Owner
KLC OpCo	253,000	$1,477.7[2]	1,934	KUE
La Petite Academy	89,000	411.1	649	JP Morgan
Bright Horizons	66,350	625.3	616	Public
ABC Learning[3]	69,000	220.7	460	Public

[1] LTM revenue in millions. KLC OpCo and Bright Horizons LTM as of 12/31/05, La Petite LTM as of 2/28/06, ABC (Learning Care Group) LTM as of 10/14/05.

[2] Pro forma for the effects of the acquisition of KinderCare in January 2005 and for the separation of KLC into KLC OpCo and KLC PropCo in November 2005, as if those transactions and related financing had occurred on January 1, 2004.

[3] Represents ABC's presence within the U.S. pro forma for the acquisition of the Learning Care Group. ABC has approximately 1,167 total centers (707 of which are located in Australia and New Zealand) and combined LTM revenue of $441.1 million using Learning Care Group LTM revenue of $220.7 million as of 10/14/05 and ABC LTM revenue of $292.7 million AUD as of 6/30/05, converted at an average exchange rate of .753 AUD/USD from 6/30/04 to 6/30/05.

— Second largest U.S. provider of ECE to employers (122 centers).

— Largest U.S. for-profit provider of before and after school programs (573 sites).

High brand awareness and customer recognition

— The programs are marketed primarily under the KinderCare, Children's Discovery Centers, Knowledge Beginnings, and Children's World brand names. KinderCare enjoyed 87% aided awareness as of November 2005.[11]

■ **Superior competitive position of KLC OpCo as a result of proprietary curriculum, standards of excellence and experience and scale**

[11] Source: Parthenon Conjoint Survey.

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KLC OpCo has leveraged its scale and operational expertise to roll out a proprietary curriculum and to provide enhanced corporate level services

— Curriculum has been developed, rolled out and refined over many years and provides a significant competitive advantage in an industry where small independent players do not have the resources to develop comparable programs.

— Operational leverage allows for enhanced marketing, back-office, legal and compliance functions, keeping KLC OpCo at the forefront of education standards.

Controls that meet or exceed requirements established by licensing authorities, state and federal government and accrediting bodies

— Controls include rigorous and stringent hiring procedures and uniform rules for conduct.

— 43% of KLC OpCo's centers, over four times the industry average of 10%, are accredited by the National Association for the Education of Young Children (referred to herein as "NAEYC"), the nation's leading accreditation body. Management believes that all the Company's centers' operations and policies meet or are substantially compliant with NAEYC accreditation requirements.

■ **A compelling business model at *k*12**

As the state of education across the U.S. is generating increasing concerns, *k*12 provides a compelling value proposition

— Children continue to perform poorly on assessment tests geared to measure reading, writing and math skills. The passing of legislation such as the "No Child Left Behind Act of 2001" which, among other things, provides for increased funding for education and implementation of achievement level standards, demonstrates the commitment of government to address the issue.

Technology and content platform easily leverageable to provide results-driven curriculum and service

— With $70 million invested in the development of the platform for kindergarten to 9th grade classes, extension of the offering into new states and schools is expected to be achieved at relatively low costs.

— *k*12 benefits from stable demand for its curriculum and services which is reflected by current reenrollment rates of 65% to 70%.

— Many of the direct costs are semi-fixed in nature (*e.g.*, school administration) creating strong economies of scale as this business continues to grow.

■ **Valuable real estate portfolio of centers providing solid asset base**

845 owned centers recently appraised at approximately $1.25 billion[12]

— New organization separating management of real estate assets allows KLC OpCo education teams to focus on the core education business.

— Long term partnership with Greenstreet Real Estate Partners ensuring state-of-the-art management of the real estate assets by a leader in this field.

[12] *Actual appraisal was for 713 out of 845 centers and the appraised value was $1.1 billion. The $1.25 billion is achieved by taking the independent appraisal valuation methodology and extrapolating it to the remaining 132 centers.*

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■ **Strong leadership teams**

KUE

— Strong team of highly experienced professionals at the KUE level, led by CEO Lowell Milken, Chairman Michael Milken and Vice-Chairmen Steven Green and Ted Sanders. The team contributes an average of more than two decades of experience in their respective fields to KUE.

— Providing corporate headquarters support services in the areas of strategy and business development, acquisitions, recruiting of executives, communication and government relations.

KLC OpCo

— Highly experienced management team comprised of both experts in the field of education (COO Dr. Elanna Yalow has substantial experience operating for-profit ECE centers), as well as business professionals.

— Seasoned executive and middle management team with average Company tenure of ten years.

*k*12

— Chairman, Founder and acting CEO Ron Packard has extensive experience in the K-12 education space and was previously with KLC before founding *k*12. John Baule, Executive Vice President and CFO, served as CFO of Headstrong for five years before joining *k*12.

1.2.3 Value Creating Strategy

■ **Value is created by owning assets across the pre-K-12 education continuum**

Incremental value is expected to be created from strategic and financial synergies inherent in a global platform

— The Company can exploit the similarities in various education markets by capitalizing on the assets it owns (*e.g.*, using KLC's expertise to establish similar operations across geographies and across the pre-K-12 education continuum).

— Sharing of best practices globally and ability to cross-sell products and services to the Company's customers.

— Entry into less structured international markets early in their development cycle to establish attractive competitive positions.

■ **Multiple growth opportunities at KLC and *k*12**

Top line organic growth at KLC OpCo is expected to be driven by several factors:

— Historically the industry has demonstrated a pattern of price increases above inflation. Historical industry data shows an average tuition rate increase of 7% per annum.[13]

— Higher "Utilization"[14] resulting from increased student enrollment, improved retention rates, further network rationalization to better align supply with demand, more favorable center build rate in the broader industry and favorable macro trends.

[13] *Source: The National Economic Impacts of the Child Care Sector 2002.*

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— The ECE industry generates approximately $54 billion in total spending in the U.S. and has grown at a compound annual growth rate of 10% since 1982. It is expected to grow at a 3.4% compounded annual rate through 2010 according to Harris Nesbitt research. The ECE industry's growth has been driven by several favorable social and demographic trends including: the increase in working mothers and single-parent or dual-income families, historically high birth rates, and increase in popularity of center-based care.

— Net opening of new centers as the integration of KinderCare winds down and the number of center openings starts exceeding the number of closures.

— Leverage of KLC OpCo's footprint to market additional educational products and services to the more than 300,000 children KLC OpCo interacts with each year, their parents, grandparents and other child care providers. Selected incremental revenue opportunities include: foreign language or music lessons, educational materials and financial services (life insurance, health insurance, tuition financing, etc.).

Growth through acquisitions and industry consolidation

— Consolidation strategy supported by the highly fragmented early childhood industry, with for-profit chains representing only approximately 5% of the market in aggregate, and small independent providers representing 60% of the market. [15]

— Management has demonstrated an ability to grow through acquisitions, as evidenced by the three networks acquired by KLC since inception, of sizes up to 1,000 centers.

Multiple drivers of expected double-digit growth at *k*12

— Existing school enrollment rates at *k*12 expected to continue to increase at double digit rates for at least the next three years, as *k*12 further penetrates its existing markets through commercial and marketing push.

— *k*12 currently operates virtual public schools in 11 states and the District of Columbia. As legislatures in other states permit the formation of virtual public schools, *k*12 expects to have opportunities to expand into new states.

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[14] *Utilization is calculated as the total actual child care revenues earned at centers that are open at the calculation date divided by the total potential child care revenue (based upon the center's undiscounted pre-school tuition rate and the center's total licensed capacity) during the related time period.*

[15] *Source: Harris Nesbitt, Education and Training, September 2005.*

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2. SUMMARY TERMS OF THE TRANSACTION

Certain of the key terms of the offering, which are subject to and qualified in their entirety by reference to the Limited Partnership Agreement of KUE, the organizational documents of the General Partner and applicable Cayman Islands law, are outlined below. The terms summarized herein are set forth in detail in the Limited Partnership Agreement of KUE, the Agreement Among Members of KUE Management, Inc. and the Amended and Restated Memorandum and Articles of Association of KUE Management, Inc., copies of which have been provided or are available upon request. Such summaries are qualified in their entirety by reference to such agreements.

Issuers:

Knowledge Universe Education L.P., a Cayman Islands exempted limited partnership ("KUE") and KUE Management Inc., a Cayman Islands exempted company, the general partner of KUE (the "General Partner").

Securities Offered:

Up to 1,000,000 investment units (the "Units"), each comprised of one Common Limited Partner Unit ("Common LP Unit") in KUE and one Class A ordinary share ("Class A Share") of the General Partner at an offering price of U.S. $1,000 per Unit ($999 allocated to the Common LP Unit and $1 allocated to the Class A Share) (the "Purchase Price") for aggregate proceeds of U.S. $1 billion (subject to increase in the offering size by the General Partner at its sole discretion up to an aggregate of 1,500,000 Units to Investors, with aggregate proceeds of U.S. $1.5 billion). The offering is expected to be completed in one or more closings on or before March 31, 2007 (the "Offering Period").

Since the General Partner will have a nominal economic interest in KUE, the Class A Shares are expected to have nominal economic value. The Class A Shares are, however, intended to provide Unit holders with certain voting and other governance rights in the General Partner (as described further below) which, in turn, will control KUE.

The Common LP Units and the Class A Shares comprising the Units owned by the investors (the "Investors") will not be separately transferable unless otherwise approved by the Board of Directors of the General Partner and a committee of Independent Directors (as defined below) (the "Independent Committee").

Minimum and Maximum Investment:

U.S. $25 million (subject to waiver by the General Partner at its sole discretion). At any closing after the first closing of the offering of the Units, the maximum investment permitted will be U.S. $185.0 million.

Closing:

KUE may accept or reject subscriptions, in whole or in part, at its sole discretion. KUE will hold one or more closings in connection with the sale of the Units on dates specified by KUE to the Investors. The minimum amount of subscriptions to be accepted in the first closing of the offering (including the amount attributable to Knowledge Universe Education

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	LLC, a Delaware limited liability company ("KUE LLC") through conversion of its preferred limited partner units, including accrued dividends at the option of KUE LLC, into Common LP Units) is U.S. $280.0 million. Subscriptions received will be promptly refunded if 280,000 Common LP Units are not issued for $1,000 per unit (in cash or preferred limited partner units) before the end of the Offering Period. Subscriptions paid in any closing will not otherwise be returned regardless of the size or occurrence of any subsequent closing. Investors admitted during the Offering Period after the first closing of this offering and after September 30, 2006 will pay an additional amount accruing at a rate of 0.67% per month calculated from the first closing date of the offering (pro-rated for partial periods) for each Common LP Unit purchased, which will be distributed promptly to the holders of Common LP Units outstanding prior to such admission in proportion to the number of Common LP Units held by such holders.
Use of Proceeds:	The proceeds of the offering described herein will be used: (i) to expand operations, including through strategic acquisitions in the U.S. and internationally, (ii) to develop new products and services, (iii) to repay, in whole or in part, $150 million of existing debt plus accrued interest (including through the application of a portion of the proceeds of the initial closing of the offering), (iv) an estimated $50 million in fees and expenses (including amounts payable from July 1, 2006 under a Fixed Overhead Payment Agreement (the "Fixed Overhead Payment Agreement")), (v) in the discretion of KUE LLC, payment at the initial closing of the offering of approximately $7.0 million of accrued preferred return on the preferred limited partner units of KUE being converted to Common LP Units if such accrued preferred return is not converted to Common LP Units and (vi) for other corporate purposes.
Capital Structure:	Assuming that 1,000,000 Units are sold to Investors by March 31, 2007, and that the accrued dividends on the preferred limited partner units are paid in cash, approximately 2,530,000 Units will be outstanding. The Investors will own approximately 40% of KUE in the form of Common LP Units (excluding profits participation limited partner units of KUE, "Profits Participation LP Units") and approximately 40% of the General Partner in the form of Class A Shares. The General Partner will be the sole general partner of KUE and will hold approximately 1,000 General Partner Units ("GP Units") in KUE, representing approximately 0.04% ownership in KUE. The economic interest in KUE represented by the Common

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LP Units and the GP Units will be reduced by the Profits Participation LP Units as described below under "Distributions."

Assuming that 1,000,000 Units are sold to Investors by March 31, 2007, and that the accrued dividends on the preferred limited partner units are paid in cash, KUE LLC, controlled by the Principals, will hold approximately 1,530,000 Common LP Units representing approximately 60% ownership in KUE (excluding Profits Participation LP Units) and 1,530,000 Class A Shares. The Common LP Units owned by KUE LLC will not be transferable, except to (i) the Principals; (ii) to affiliates of the Principals; and/or (iii) to family members and/or charitable organizations in connection with the Principals' estate planning, unless combined with the corresponding percentage of Class A Shares to form Units and transferred in the form of Units in accordance with the Limited Partnership Agreement.

Knowledge Universe Holdings LLC, a Delaware limited liability company ("KUH LLC") controlled by the Principals, will hold 900 Class B ordinary shares of the General Partner (the "Class B Shares"). The Class B Shares held by the Principals and their affiliates will not be transferable, except to (i) the Principals; (ii) to the affiliates of the Principals; and/or (iii) to family members and/or charitable organizations in connection with the Principals' estate planning. The Class B Shares will automatically convert to Class A Shares if the Principals' aggregate direct and indirect economic interest in KUE is less than 15% of the outstanding Partnership Units (as defined below) of KUE.

A limited liability company ("KULG LLC-1"), of which Knowledge Universe Learning Group LLC, a Delaware limited liability company that is controlled by the Principals ("KULG"), and certain other persons designated by KULG are members, will be the holder of the Profits Participation LP Units (the "Profits Participation Limited Partner") with the economic rights as set forth in "– Distributions" below. At each closing of any sale of Units to Investors where the aggregate purchase price of all Units acquired by Investors to date is less than or equal to $1.5 billion (during the Offering Period or thereafter), the Profits Participation Limited Partner will be issued a number of Profits Participation LP Units such that the aggregate shall equal at least 9/11ths of the 11% of "Partnership Units" (Common LP Units, GP Units, and Profits Participation LP Units) that may be represented by Profits Participation LP Units. Additional Profits Participation LP Units will be issued to the Profits Participation Limited Partner, at such time and in such numbers as the Profits Participation Limited Partner will direct, based upon the issuance by the Profit Participation Limited Partner of interests to members of the Profits Participation Limited Partner (who may include employees, officers, directors, consultants and agents of KUE, its

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	subsidiaries and joint ventures as designated by KULG other than the Principals and their affiliates), the vesting schedule of such interests, and whether certain tax elections are made by the recipients of such interests; provided, however, the total number of Profits Participation LP Units shall not exceed a number equal to eleven percent (11%) of the aggregate number of Partnership Units. Any increase in the number of Profits Participation LP Units following the sale of the first $1.5 billion of Common LP Units to Investors requires a majority vote of the Independent Committee. Subsequent to the completion of this offering, KUE may raise additional capital through the sale of equity or debt securities. KUE will not have any preferred limited partner units outstanding upon completion of this offering but KUE may issue limited partner units with preferences over the Common LP Units in the future and may amend the Limited Partnership Agreement accordingly.
Distributions:	First, to the Common Limited Partners and the General Partner in proportion to and to the extent of their unreturned Capital Contributions, but in no case may a distribution pursuant to this paragraph exceed a Partner's positive adjusted capital account balance; Second, to the Common Limited Partners and the General Partner and the Profits Participation Limited Partner (with respect to Profits Participation Units theretofore allocated to persons other than the Principals and their Affiliates, if specified by the Profits Participation Limited Partner, but not with respect to more than 2/11ths of the Profits Participation Units) to the extent of an 8% preferred return; Third, to the Profits Participation Limited Partner in the additional amount the Profits Participation Limited Partner would have received pursuant to the prior paragraph if it had fully participated in the distribution of the 8% preferred return with respect to all outstanding Profits Participation Units; and Fourth, to the Common Limited Partners, the Profits Participation Limited Partner, and the General Partner in proportion to the number of Units held by each such Partner. Distributions may be made in cash or in kind. Allocations of income, gains, profits and losses are described in "The Structure of KUE and the General Partner" in this Private Placement Memorandum. The Limited Partnership Agreement gives the General Partner the authority to override the distribution provisions of the Limited Partnership Agreement described above in order to achieve the desired economic arrangement of KUE, which is: (i) first, to return the Partners' Capital Contributions to them; (ii) second, for the Common Limited Partners and the General Partner to receive their Preferred Return while the

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	Profits Participation Limited Partner concurrently receives an amount equal to a fraction of the amount the Common Limited Partners and the General Partner received pursuant to their Preferred Return (such fraction to be equal to the portion of the Units held by the Profits Participation Limited Partner attributable to members of the Profits Participation Limited Partner other than the Principals), multiplied by the number of Units held by the Profits Participation Limited Partner divided by the number of outstanding Units other than those Units held by the Profits Participation Limited Partner; (iii) third, for the Profits Participation Limited Partner to receive an amount equal to a fraction of the amount the Common Limited Partners and the General Partner received pursuant to their Preferred Return (such fraction to be equal to the portion of the Units held by the Profits Participation Limited Partner attributable to members of the Profits Participation Limited Partner who are Principals or their affiliates), multiplied by the number of Units held by the Profits Participation Limited Partner divided by the number of outstanding Units other than those Units held by the Profits Participation Limited Partner; and (iv) finally, for all Partners (including the Profits Participation Limited Partner) to share in the profits of the Partnership in proportion to the number of Units held by them. Notwithstanding any contrary provisions below addressing equal merger consideration, in connection with any distribution of securities of a subsidiary entity which has high vote and low vote (or non-voting) securities with substantially equivalent economic rights, the Principals can receive the high-vote securities in such a distribution while the other holders of Common LP Units receive the low vote (or non-voting) securities, as long as the securities otherwise have substantially equivalent economic rights and the high-vote securities have mandatory conversion features equivalent to the mandatory conversion provision of the Class B Shares.
Equal Merger Consideration Provision:	The Principals (through KUE LLC) and the Investors will receive the same consideration per Common LP Unit and/or Class A/Class B Shares in connection with a sale, merger, recapitalization, share repurchase, dividend, or any other transaction where all holders of Common LP Units or shares in the General Partner receive consideration with respect to their Common LP Units or shares, other than with respect to corporate restructuring transactions, such as a holding company merger, conversion of KUE from an exempted limited partnership to a corporation or other entity, change of domicile, or any other transaction that the Independent Committee determines is a "corporate restructuring." In any such corporate restructuring transaction, the Principals (through KUE LLC) may receive securities with high-voting rights and the Investors may receive securities with limited or no voting rights so long as the consideration received by the Principals (through KUE LLC) and the other Partners per

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	Common LP Unit have substantially equivalent economic provisions.
Fixed Overhead Payment:	KUE and/or one or more of its subsidiaries will pay $20 million annually to KULG in quarterly installments beginning July 1, 2006 pursuant to the Fixed Overhead Payment Agreement as an agreed upon payment to provide for the reimbursement of expenses and other costs incurred by KULG on behalf of KUE and its subsidiaries (including, but not limited to, salaries and bonuses of KULG employees providing services to KUE and its subsidiaries, fees and expenses relating to financing transactions and acquisitions, professional fees and other administrative expenses). To the extent that the U.S. $2,500,000 fee payable pursuant to an existing management services agreement with Knowledge Learning Corporation is paid to any person or entity other than a subsidiary of KUE, the amount payable to KULG by KUE will be reduced by the amount of such payment to such other person or entity. The $20 million annual fee will terminate upon the Initial Listing (as defined below) or the sale of KUE to a person or entity that is not a KUE LLC Entity.
Voting Rights:	The General Partner will manage and operate KUE. The Investors will have no voting rights on matters affecting Company business with respect to their Common LP Units in KUE because the Investors will be limited partners of KUE. Notwithstanding the foregoing, subject to certain exceptions, KUE must obtain the consent of (a) the holders of a majority of the Common LP Units unaffiliated with the Principals to amend the Limited Partnership Agreement in a manner that is adverse to the Common LP holders and (b) the holders of at least 90% of the Common LP Units unaffiliated with the Principals to amend the "Equal Merger Consideration Provision" described above. In addition, the General Partner may not take any action to (a) alter or add to its Articles or (b) alter or add to its Memorandum with respect to any objects, powers or other matters specified therein that would adversely affect the rights of holders of Class A Shares without the affirmative vote of the holders of a majority of the Class A Shares. Holders of the Class A Shares of the General Partner will have one vote per share. The holders of Class B Shares, will have in the aggregate one more vote than the requisite legal vote required to approve particular matters. In addition, the Investors will have the right to elect directors to the Board of Directors of the General Partner as set forth in "Board of Directors" below. The Class B Shares will automatically convert to Class A Shares if the Principals' aggregate direct and indirect economic interest in KUE is less than 15% of the

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	outstanding Partnership Units of KUE.
Board of Directors:	The General Partner will have a Board of Directors initially consisting of up to 13 persons. Following the first closing of the offering and prior to the "Initial Listing" (as defined below), the outside Investor (including its affiliates) holding the greatest number of shares in the General Partner at the first closing of the offering will appoint two directors of the General Partner and the holders of the Class B Shares will appoint the remaining directors. Following the initial appointment of the Board, the Board may, in its sole discretion, increase the number of directors, including to accommodate investors that invest subsequent to the initial closing of the offering of the Units, provided that the outside Investor appointing two directors pursuant to the paragraph above shall have the right to appoint additional directors as required to maintain a ratio of such Investor's designees to total Board members of not less than 2/15ths. "Independent Directors" of the Board of Directors of the General Partner shall be individuals who (a) are not (i) a Principal, (ii) a family member of a Principal, (iii) an employee of a Principal or any entity controlled by one or more of the Principals, and (b) meet the definition of "independent director" set forth in Rule 303A.02 of the New York Stock Exchange Listed Company Manual (as if the General Partner, the Partnership and each of its Subsidiaries were the "listed company") , including any such individuals appointed by the Investors who otherwise satisfy the requirements of this definition. At the time of the final closing of this offering, the General Partner will have at least two Independent Directors. After the Initial Listing and so long as consistent with contractual, listing and licensing obligations, a majority of the board of directors of the listed company will be Independent Directors.
Initial Listing Process:	"Initial Listing" means a listing on a recognized international securities exchange with a substantially concurrent underwritten offering generating gross proceeds of U.S. $200 million or more. "Initial Listing" refers to the Initial Listing of KUE or any successor or any subsidiary of KUE to which substantially all of KUE's assets and liabilities have been transferred or are held. The General Partner may take and cause KUE to take such actions as the General Partner reasonably deems necessary to complete the Initial Listing on the recognized international securities exchange or exchanges selected by the General Partner, including without limitation a restructuring or reorganization or other transaction or asset transfer between or among KUE and any of its subsidiaries, and may require

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	Partners to exchange their interests in KUE and the General Partner for interests in a subsidiary of KUE.
Related Party Transactions:	Related party transactions include transactions between (1) any of the Principals or any of their affiliates or any entity controlled by any of the Principals, and (2) KUE or any direct or indirect subsidiary or joint venture of KUE involving more than $1 million (including, for the avoidance of doubt, any merger, acquisition, asset purchase or similar transaction between KUE, its subsidiaries or joint ventures, on the one hand, and any person of which fifteen percent (15%) or more of the voting stock (or similar voting interests) is owned by KUE LLC or its affiliates, on the other hand). Related party transactions do not include (a) any transaction solely between or among KUE and any of its direct or indirect subsidiaries or joint ventures in which the Principals do not have any direct or indirect ownership interest (other than as a result of their ownership in the General Partner and KUE), (b) reasonable and customary director, advisory board member, or consultant compensation and benefits (including, without limitation, retirement, health, stock option and other benefit plans) as approved by the Independent Committee, provided that any such compensation, benefits and arrangements to the Principals that do not exceed $1 million in the aggregate annually shall not be subject to such approval, and customary indemnification arrangements, (c) transactions and arrangements pursuant to or contemplated by express terms of the Limited Partnership Agreement of KUE, including the "Investment in Subsidiaries" and "Co-Invest Right" described below, and any payments pursuant thereto, and the Fixed Overhead Payment described above, (d) agreements, transactions and arrangements described in "Related Party Transactions" in this Private Placement Memorandum and any amendment thereto (so long as such amendment is not disadvantageous to the Investors as a whole in any material respect) or any transaction contemplated thereby and any payments pursuant thereto, and (e) admissions of any affiliate of the Principals to KUE as a Limited Partner on terms substantially equivalent to concurrent admissions of persons that are not affiliates of the Principals. If the size of the related party transaction is greater than $1 million and equal to or less than $50 million, then either (a) the Independent Committee must approve the transaction or (b) the transaction must be approved by the holders of a majority of the Common LP Units unaffiliated with the Principals. If the size of the related party transaction is greater than $50 million, then the transaction must be approved by both (a) the Independent Committee and (b) the holders of a majority of the Common LP Units unaffiliated with the Principals.

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Investment in Subsidiaries:	Not in limitation of any commitments or restrictions the Principals may have entered into, prior to an Initial Listing, KUE may not permit any of its subsidiaries or controlled joint ventures (which shall not include, for the avoidance of doubt, certain exempt companies contemplated by the following paragraph) to issue or grant any equity interests in such subsidiaries or controlled joint ventures to any of the Principals or any of their affiliates (other than KUE, its subsidiaries and controlled joint ventures) unless (i) the Independent Committee approves and the Investors who are accredited investors (as such term is defined in Regulation D) or otherwise legally eligible to participate are offered the opportunity to participate on the same terms as the Principals and their affiliates and in proportion to their economic ownership of KUE or (ii) such subsidiary or joint venture of KUE has completed an initial listing on a recognized international securities exchange, subject to certain limited exceptions. The Principals intend that KUE will be their exclusive vehicle for equity investment opportunities in and acquisitions of for-profit companies engaged primarily in the business of pre-K through 12th grade education of children, subject to limited exceptions as set forth in "The Structure of KUE and the General Partner" in this Private Placement Memorandum.
Transferability of Units:	The Common LP Units and the Class A Shares comprising the Units owned by the Investors will not be separately transferable, and the Units are to be transferred as a whole unless otherwise approved by the Board of Directors of the General Partner and the Independent Committee (defined below). Units held by an Investor may not be sold, transferred or assigned without the prior written consent of the General Partner, not to be unreasonably withheld. The General Partner intends, during the first two years after the applicable closing of the offering, to approve transfers of the Units to an affiliate of the Investor, in compliance with applicable law. After such time, the General Partner intends to approve transfers of Units to an affiliate of the Investor or to another Investor (and affiliates thereof), in each case in compliance with applicable law. The General Partner also intends to approve transfers pursuant to the Tag-Along Right and Drag-Along Right provisions described below.
Tag-Along Right:	Unless the Investors' Units (or securities received in exchange for Units if the Initial Listing is of a Subsidiary of KUE) are freely tradable without volume restrictions on the exchange on which the Initial Listing occurred, with respect to any proposed transfer of the Common LP Units held by KUE LLC and its affiliates to a non-affiliate purchaser (and, unless otherwise approved by the Board of Directors and the Independent Committee of the General Partner, a

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	corresponding percentage of Class A Shares held by KUE LLC), the Investors may sell a pro rata portion of their Common LP Units and corresponding Class A Shares in the proposed transfer on the same terms and in exchange for the same consideration per Unit (and Class A Share) received by KUE LLC and its affiliates. Following the Initial Listing, the tag-along right will continue for certain Investors with respect to transfers for value of the Units (or units of the listed entity as the case may be) by the Principals or their affiliates to non-affiliates (excluding transfers on a recognized international securities exchange) above the following thresholds in one or more transactions: (i) 15% of the Principals' original KUE holdings to any single buyer (or affiliates of that buyer) or (ii) 33% of the Principals' original KUE holdings in the aggregate.
Drag-Along Right:	Prior to the Initial Listing, with respect to any proposed transfer of a majority of the Units held by KUE LLC to a proposed non-affiliate purchaser (and, unless otherwise approved by the Board of Directors and the Independent Committee of the General Partner, a corresponding percentage of Class A Shares held by KUE LLC), the Investors may be required to sell a pro rata portion of their Units and corresponding Class A Shares in the proposed transfer on the same terms and in exchange for the same consideration received by KUE LLC.
Co-Invest Right:	Prior to the Initial Listing, if KUE proposes to issue for cash any Units or securities convertible into Units after the Offering Period (subject to certain exceptions), then KUE is required to offer to each Investor that is an accredited investor (as such term is defined in Regulation D) or otherwise legally eligible to participate in the offering, the right to purchase a pro rata portion of such securities. Prior to the Initial Listing, the Investors have substantially equivalent rights with respect to issuances of securities by the General Partner.
Additional Listing of Investors' Units:	Beginning any time after six months after the Initial Listing, one or more holders holding an aggregate of $100 million of more of the Units may request KUE and the General Partner to take such action as may be necessary for their Units to be freely tradable and not subject to volume restrictions on the international securities exchange on which the Initial Listing occurred; provided that no more than one such action may be required in any 12 month period and customary cut-back and other provisions will apply in any such listing or underwritten transaction, as the case may be. KUE will use its commercially reasonable efforts to cause such action to cover such holders and the securities of any other holders legally eligible to participate in such action.

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Term:	The term of KUE will be indefinite, unless terminated earlier in accordance with the Limited Partnership Agreement.
Illiquidity Period:	KUE will operate for a period of seven years from the date of the first closing of this offering. If there has not been an Initial Listing by the end of seven years from the date of the first closing of this offering, the Board of Directors of the General Partner will determine whether to pursue a sale of KUE or an Initial Listing (or a dual track process); provided, however, in the event that not less than 75% of the value of KUE at that time is represented by shares of securities listed on one or more recognized international securities exchanges and such shares have been or will be distributed as soon as reasonably practicable thereafter to the Investors and the Investors have received distributions of cash and/or such securities valued at amounts equal to or in excess of their original capital contributions, then there shall be two extensions of one year's duration each in order for KUE to complete either an Initial Listing or to have the remaining value of KUE represented by shares of securities listed on a recognized international securities exchange and to distribute such shares to the Investors. The Board of Directors shall approve the desired course of action. If the Board determines to pursue a sale of KUE (or an Initial Listing or a dual track process), then the Principals must determine at such time whether they intend to participate as a potential bidder in the sale process. If the Principals elect not to participate as a potential bidder in a sale process, then they will not be allowed to subsequently elect to participate as a potential bidder unless the sale process does not result in a buyer at a price the Independent Committee deems to be "fair." If the sale process results in a transaction that the Independent Committee deems to be "fair", the Principals will be required to sell their entire stake in KUE (Common LP Units and Profits Participation LP Units on an "as converted" basis) on the same terms as the Investors. If the Principals elect to participate as a potential bidder in a sale process, then the sale process will be managed by the Independent Committee and the Principals will be precluded from participating in Board deliberations regarding the sale process. In addition, the Principals will be required to sell their entire stake in KUE on the same terms as the Investors to the winning bidder in the event the Principals do not submit the most attractive bid. In the event that a sale of KUE or an Initial Listing has not occurred within nine years from the date the first Investors are admitted to KUE, the Independent Committee shall determine whether to pursue a sale of KUE (or an Initial Listing or a dual track process). A majority vote of the

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	Independent Committee on this issue shall be binding on the Board of Directors of the General Partner and will require the Board of Directors of the General Partner to pursue such action within ninety (90) days.
Indemnification:	KUE will indemnify the General Partner and its members, officers, directors, and employees, and at the General Partner's discretion, any other person providing services to KUE, its subsidiaries or joint ventures. KUE has provided a customary indemnity to the Agents in connection with their services.
Periodic Reporting:	KUE will provide annual audited financial statements and semi-annual reports. The General Partner will provide such periodic reports if engaged in any business other than acting as general partner of KUE or if it owns any material assets other than an interest in KUE.
Certain U.S. Federal Income Tax Consequences:	For a discussion of certain U.S. federal income tax consequences that may be relevant to prospective investors, please read "Certain Income Tax Consequences" in this Private Placement Memorandum.

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3. USE OF PROCEEDS

The proceeds of this offering will be used: (i) to expand operations, including through strategic acquisitions in the U.S. and internationally, (ii) to develop new products and services, (iii) to repay, in whole or in part, $150 million of existing debt plus accrued interest (including through application of a portion of the proceeds of the initial closing of the offering after payment of expenses and preferred returns), which currently bears interest at either the reserve adjusted LIBOR rate plus 0.125% or the base rate (generally the applicable prime lending rate, as announced from time to time), (iv) to pay an estimated $50 million in fees and expenses (including amounts payable to the Agents and including amounts payable from July 1, 2006 under the Fixed Overhead Payment Agreement), (v) in the discretion of KUE LLC, payment at the initial closing of the offering of approximately $7.0 million of accrued return on the preferred limited partner units of KUE being converted to Common LP Units if such accrued return is not converted to Common LP Units and (vi) for other corporate purposes. Until the proceeds are used, KUE currently intends to invest the unapplied proceeds in cash-equivalents and short-term marketable securities.

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4. CAPITALIZATION

The following table sets forth KUE's cash, cash equivalents and senior capitalization as of December 31, 2005:

- on an actual basis; and
- on a pro forma basis to give effect to the sale of $1 billion in Units in this offering by KUE after deducting estimated offering fees and estimated offering expenses payable by KUE.

You should read this table together with "Management's Discussion and Analysis of KLC's Pro Forma Results of Operations" and the audited and unaudited consolidated financial statements and the related notes appearing elsewhere in this Memorandum. See "Related Party Transactions" for more information on related party interests.

KUE Senior Capitalization			
	As of April 1, 2006		
	Actual	Adjustments[1]	Pro Forma
Cash			
KUE	$9.4	$800.0	$809.4
KUE Inc.	5.4		5.4
KSI	3.0		3.0
KLC OpCo	115.4		115.4
KLC PropCo	31.8		31.8
Total Cash	$164.9	$800.0	$964.9
Debt			
KUE[2]	$150.0	($150.0)	$0.0
KUE Inc.[3]	183.9		183.9
KLC OpCo – Sr. Sub. Notes	260.0		260.0
KLC OpCo - Capital Leases	16.2		16.2
KLC PropCo - CMBS	697.7		697.7
KLC PropCo - Junior Mezzanine[4]	147.9		147.9
Total Debt	$1,455.7		$1,305.7
Preferred Equity			
KUE[5]	180.0	(180.0)	0.0
Total Debt and Preferred Equity	$1,635.7		$1,305.7

[1] *Assumes $50 million of fees and expenses.*

[2] *Upon closing, KUE LLC will contribute all of its assets to KUE. In addition, upon contribution of assets to KUE by KUE LLC, KUE will become a co-borrower to the KUE LLC term loan which will be repaid with the proceeds of the offering.*

[3] *Includes capitalized interest of $10.7 million.*

[4] *Represents book value net of original issue discount plus capitalized interest. Original principal amount is $150 million.*

[5] *Reflects the conversion of existing preferred limited partner units of KUE LLC into common limited partner units of KUE at the offering price.*

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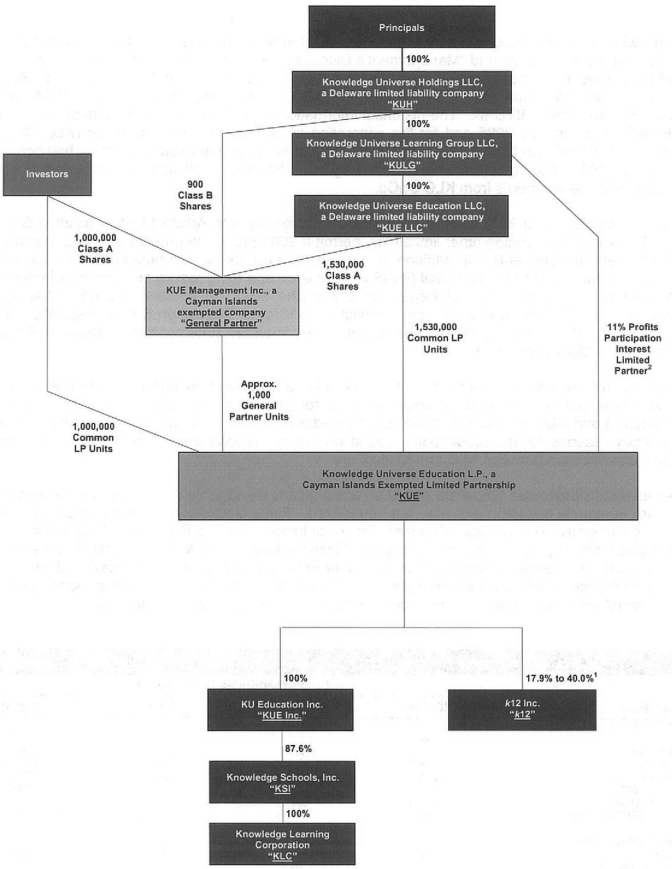
Organizational Structure – Pro Forma for Funding of $1 Billion. All figures are rounded.



[1] *KUE owns preferred stock that is convertible into 17.9% of k12's Common Stock. KUE's ownership varies depending on the liquidation value or sale value of k12 and according to the preference of the various securities KUE owns. At higher valuations, KUE's percentage ownership is lower. See "k12 Inc. (k12) – k12 Equity."*

[2] *Of those Profits Participation LP Units outstanding immediately after the offering, 2/11ths will be allocated or held for the benefit of persons other than the Principals or their affiliates.*

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5. SUMMARY FINANCIAL DATA

The following summary historical pro forma and projected financial data should be read in conjunction with the financial statements and "Management's Discussion and Analysis of KLC's Pro Forma Results of Operations" presented elsewhere in this Memorandum. See also "Non-GAAP Financial Measures" elsewhere in this Memorandum for a discussion of the derivation and limitations of EBITDA, Adjusted EBITDA and Adjusted EBITDAR. The historical information is pro forma for the effects of our acquisition of KinderCare in January 2005 and for the separation of our business into operating (KLC OpCo) and property (KLC PropCo) in November 2005, as if those transactions and related financing had occurred on January 1, 2004. The rental income received by KLC PropCo in all periods presented is primarily comprised of lease payments from KLC OpCo.

Our pro forma results for KLC were not prepared in conformity with Article 11 of Regulation S-X of the SEC (which would not, among other limitations, permit a 2004 pro forma presentation after completion of our 2005 financial statements). In addition, by presenting a pro forma comparison, this section does not include a comparison of KLC's historical GAAP consolidated operating results or segment information that would be required by Item 3-03 of Regulation S-X of the SEC. In addition, the non-GAAP financial information presented below does not comply with Item 10(e) of Regulation S-K or Regulation G of the SEC. For further information, please see KLC's GAAP financial statements and those of KinderCare included in this Memorandum.

The pro forma presentation below is not shown with adjustments to historical financial statements. Instead, it is based on a "ground up" combination of corporate level expenditures (overhead and capital expenditures) and internal financial statements derived from a center-by-center build up of KLC's results. The primary reasons for the presentation based on internal reports are different fiscal year ends and expense classification between KLC and KinderCare.

Projected results presented below are based on assumptions management believes to be reasonable, but which are inherently uncertain and may not be realized. For a discussion of the assumptions, see "The Operating Company (KLC OpCo) – Summary Financial Information and Projections Discussion" and "The Real Estate Company (KLC PropCo) – Summary Financial Information and Projections Discussion." Our ability to perform as projected depends on a number of variables that cannot be predicted with certainty and our performance could be adversely affected by a number of factors, including those described in "Risk Factors" elsewhere in this Memorandum. See also "Forward-Looking Statements."

KLC Consolidated Historical Pro Forma and Projected Financial Summary

	Fiscal Year Ended December 31,			
($ in millions)	**2004PF[1]**	**2005PF[1]**	**2006P**	**2007P**
OPERATIONAL DATA:				
Revenue	$1,442.2	$1,477.7	$1,557.8	$1,661.0
Revenue Growth		*2.5%*	*5.4%*	*6.6%*
Gross Profit	$329.6	$340.7	$387.0	$421.4
Adjusted EBITDA[2]	$231.4	$238.0	$249.7	$272.6
Adjusted EBITDA Margin	*16.0%*	*16.1%*	*16.0%*	*16.4%*
Adjusted EBITDAR	$344.5	$359.1	$363.1	$387.7
Adjusted EBITDAR Margin	*23.9%*	*24.3%*	*23.3%*	*23.3%*
OTHER FINANCIAL DATA:				
Interest Expense	89.9	89.9	89.9	89.5
Capital Expenditures	70.6	83.1	69.9	60.2

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KLC OpCo Historical Pro Forma and Projected Financial Summary

($ in millions, except for weekly tuition)	Fiscal Year Ended December 31,			
	2004PF[1]	2005PF[1]	2006P	2007P
OPERATIONAL DATA:				
Revenue	$1,442.2	$1,477.7	$1,557.8	$1,656.5
Revenue Growth		*2.5%*	*5.4%*	*6.3%*
Gross Profit	$233.3	$244.4	$290.7	$320.6
Adjusted EBITDA[2]	$143.3	$149.9	$161.7	$179.9
Adjusted EBITDA Margin	*9.9%*	*10.1%*	*10.4%*	*10.9%*
Adjusted EBITDAR	$352.8	$367.4	$371.4	$391.4
Adjusted EBITDAR Margin	*24.5%*	*24.9%*	*23.8%*	*23.6%*
OTHER FINANCIAL DATA:				
Interest Expense	$23.5	$23.5	$23.6	$23.5
Capital Expenditures	70.6	83.1	69.9	60.2
# of Centers	2,021	1,934	1,894	1,878
Average Weekly Tuition	$156.61	$167.35	$173.68	$179.99
Utilization	*61.6%*	*61.2%*	*62.2%*	*63.0%*

KLC PropCo Historical Pro Forma and Projected Financial Summary

($ in millions)	Fiscal Year Ended December 31,			
	2004PF[1]	2005PF[1]	2006P	2007P
OPERATIONAL DATA:[3]				
Rental Revenue From KLC OpCo	$96.3	$96.3	$96.3	$96.3
Other Rental Revenue	0.0	0.0	0.0	4.6
Total Revenue	$96.3	$96.3	$96.3	$100.9
Operating Expenses	$8.3	$8.3	$8.3	$8.3
EBITDA	$88.1	$88.1	$88.1	$92.6
OTHER FINANCIAL DATA:				
Interest Expense	$66.4	$66.4	$66.3	$66.0

*k*12 Historical and Projected Financial Summary

($ in millions)	Fiscal Year Ended June 30,			
	2004	2005	2006P	2007P
OPERATIONAL DATA:				
Revenue[4]	$71.4	$85.3	$116.0	$132.2
Revenue Growth		*19.5%*	*36.0%*	*14.0%*
EBITDA	($1.9)	$2.2	$5.7	$12.3
EBITDA Margin	*(2.6)%*	*2.6%*	*4.9%*	*9.3%*
OTHER FINANCIAL DATA:				
Capital Expenditures	$4.3	$4.9	$9.4	$15.0
# of States Served[4]	11	11	12	14
# of Students	10,811	14,144	18,267	24,000

[1] Pro forma for the effects of the acquisition of KinderCare in January 2005 and the separation of KLC into KLC OpCo and KLC PropCo in November 2005, as if those transactions and related financing had occurred on January 1, 2004.

[2] EBITDA and EBITDAR are adjusted for restructuring charges, closed center costs, (gains) / losses on center sales, (gains) / losses on minority investment, dividend income, IDS expenses, estimated parallel organization costs, management fees, KLC OpCo's long term incentive plan and Knowledge School Inc.'s SAR Plan-related costs allocated to KLC. See also "Management's Discussion and Analysis of KLC's Pro Forma Results of Operations" and "The Real Estate Company (KLC PropCo) – KLC PropCo Summary Financial Information and Projections Discussion."

[3] Does not include the reinvestment of real estate revenues. Please refer to "The Real Estate Company (KLC PropCo)" for this information.

[4] Includes only states in which virtual academies are operated. Includes Washington, D.C.

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